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ESTABLISHED M.DCCC.XLIII.

FOR THE PUBLICATION OF

HISTORICAL AND LITERARY REMAINS

CONNECTED WITH THE PALATINE COUNTIES OF

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Charles Simms and Co., Printers, Manchester.

REMAINS

HISTORICAL & LITERARY

CONNECTED WITH THE PALATINE COUNTIES OF

LANCASTER AND CHESTER.

PUBLISHED BY

THE CHETHAM SOCIETY.

VOL. LXXX.

PRINTED FOR THE CHETHAM SOCIETY.
M.DCCC.LXIX.

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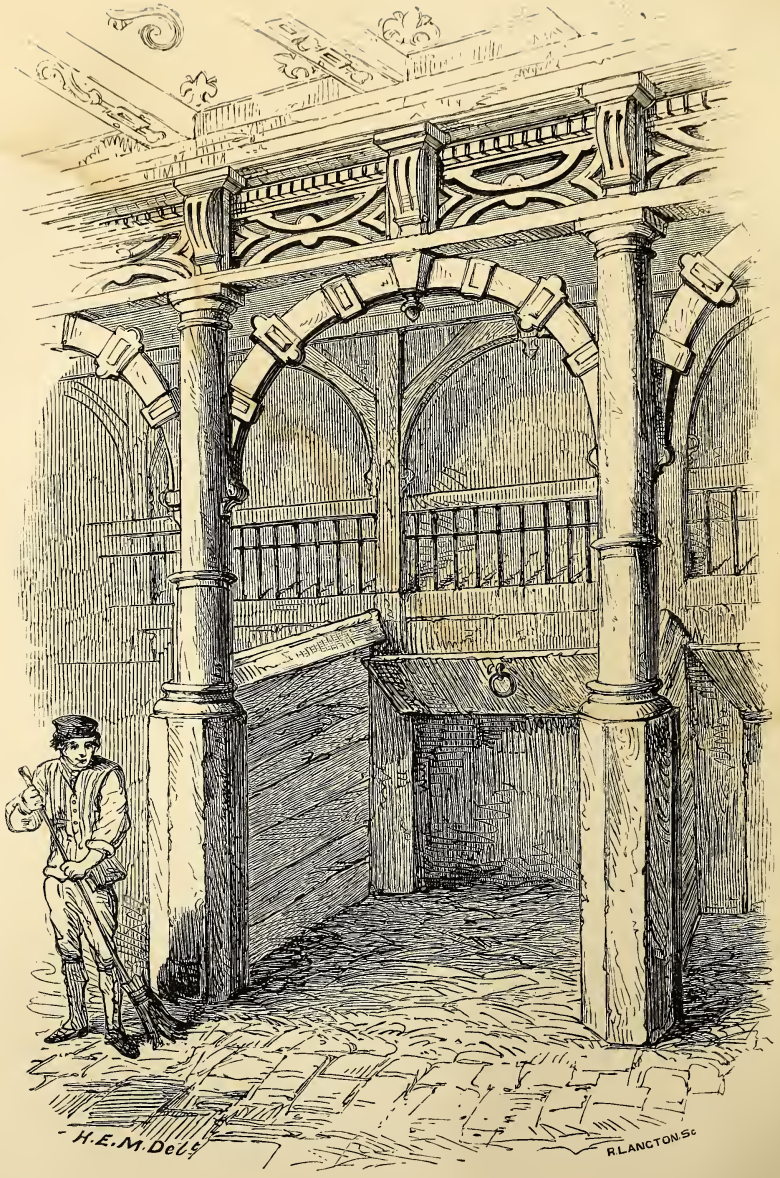

STALL IN THE GREAT STABLE AT PEOVER,

FROM A DRAWING BY MISS HENRIETTA E. MAINWARING.

TRACTS

WRITTEN IN THE CONTROVERSY RESPECTING THE LEGITIMACY OF

AMICIA,

DAUGHTER OF

HUGH CYVELIOK,

EARL OF CHESTER.

A.D. 1673 — 1679.

BY SIR PETER LEYCESTER, BART., AND SIR THOMAS MAINWARING, BART.

Reprinted from the Collection at Peover.

EDITED, WITH AN

INTRODUCTION,

BY

WILLIAM BEAMONT, Esq.

PART III.

PRINTED FOR THE CHETHAM SOCIETY.

M.DCCC.LXIX.

Printed by Charles S. Simms,
Manchester.

1390794

A

REPLY

TO

Sr. Thomas Manwaring's

ANSWER

TO MY

TWO BOOKS.

Written by Sr. Peter Leycester, Baronet,
Anno Domini, 1675.

The Second REPLY.

Together with the Cafe of *Amicia*
truly Stated.

LONDON,
Printed in the Year, 1676.

Bromyard 8.50 6-20-66 9687 P.O. 2431

[1]THE PREFACE TO THE READER.

[A 3, recto.]

I *Received on the* 13th. *of* April, 1675. *a very ſtrange kind of Book from Sir* Thomas Manwaring, *then delivered unto me by his Servant; wherein I expected a Book of Arguing to the point of the Controverſie between us: But behold a book of Railing, catching (as his uſual manner is) at every ſmall impertinent thing.*

That I may the ſooner come to the Book it ſelf, I ſhall obſerve [2]*only out of his Epiſtle, this one thing, How he minceth the Truth,* [A 3, verso.] *in telling the Reader —— that my Servant did (by my Command) ſignifie unto him in a Letter, that I would write again, and this before Sir* Thomas *had printed one word of his* Reply: *So that if he find me thus Stumbling at the firſt, it is well if he do not take me oft Tripping before I come to my Journeys end.*

Whereunto I ſay, that he deals not clearly in his words, and declareth not the whole Truth: For it is true, that I did command my Servant to write unto him; but what did I command him to write? Was it barely that I would then write again? No: but to let him know, that I had then found ſome new Precedents which (I conceived) would clear the point between us, and came to my knowledge ſince I had publiſhed my Anſwer; of which I thought good to give him timely notice, that I would add them to my Anſwer

[A 4, recto.] *already Printed, which* [3]*were omitted therein; and this before his* Reply *was Printed, as Sir* Thomas *here confeſſeth: This was rather an amendment of my former book, then writing again* de novo; *for as yet he had publiſhed no book againſt it, but this part of the Truth he conceals; and if my Servant writ otherwiſe than to this effect, I utterly diſown it to be written by my command: But before I could get my* Addenda *Printed, he Publiſhed a* Reply *to my Anſwer; wherein were ſo many Crimes charged upon me, that I was forced to a Vindication of my ſelf, which I did then put into my* Addenda, *yet not ſo fully as I might have done: See my* Addenda, *p.* 8. *and alſo* p. 27.

And whatſoever I have alſo written more, then what I firſt intended and declared, I have been forced thereunto in my own defence.

And ſo I will now briefly come to his Book, and hope to ſhew clearly who Trips moſt in the Journey, he or I; and wherein I do

[A 4, verso.] *Trip, it* [4]*ſhall be readily confeſt: I think mine will not be found many, nor material to the main point; but I believe his will be found Fundamental Errors: And I could wiſh that Sir* Thomas *would as freely confeſs his Trips as I ſhall confeſs mine, then the whole buſineſs would ſoon be at an end.*

And herein I ſhall endeavour all along to avoyd all obloquies, wherewith he aboundeth as much as I can; for Calumnies and Slanders will find no place among Wiſe and Good Men, and are ever inconſiſtent with thoſe excellent Chriſtian Graces of Humility and meekneſs.

Mobberly,
May the 18th. 1675.

[1]A Second Reply.

[Page 1.]

Pag. 1. *Of his Anſwer to my two Books.*

HEre he ſaith, that I affirm ſeveral times, that *Glanvil* ſaith that Lands may be given with any Woman *in liberum maritagium:* whereas he ſaith only, they may be given *cum quâlibet muliere in maritagium.*

My Reply.

I did, and do yet affirm it; and have proved it too; ſee *pag.* 54. of my former Reply, which yet he hath [2]not anſwered: nor [Page 2.] do I believe that he can rationally anſwer my Argument there: For though *Glanvil* hath not theſe very words —— Lands may be given with any Woman *in liberum maritagium*] ; yet he ſaith it by Conſequence, drawn clearly out of his words, *lib.* 7. *cap.* 18. which is the ſame in effect.

Nor doth Sir *Thomas* repeat *Glanvil*'s words aright; and yet he is ready upon all occaſions to tax me with the like: the words of *Glanvil*, lib. 7. cap. 1. are —— *quilibet liber homo, terram habens, quandam partem terræ ſuæ cùm filiâ ſuâ, vel cum aliquâ aliâ qualibet muliere, poteſt dare in maritagium* ... &c. not barely *cùm qualibet muliere.*

Pag. 2. *Of his Anſwer to my two Books.*

Here he ſaith, I tell him that I have proved *Geva* to be a Baſtard out of an Hiſtorian Contemporary; by which *Ordericus*
[Page 3.] *Vitalis* is meant, [3]and yet *Ordericus* ſaith no ſuch thing.

My Reply.

'Tis true, I ſaid ſo, and have proved it too: See my Anſwer to his Defence of *Amicia*, pag. 34, 35. for though he hath not theſe very words [Geva *is a Baſtard*], yet by ſure Conſequence it follows out of the words of *Ordericus*, that ſhe was a Baſtard, which is all to one effect; and here is another trip of a fallacy in Sir *Thomas*.

Pag. 2. *Of his Anſwer to my two Books.*

1. Here he alſo ſaith, that I affirm the Common Law is now altered otherwiſe than by Act of Parliament, without quoting any Author.

2. And alſo that I brag of ſeveral Precedents where Lands were given in free Marriage with Baſtards; and yet I prove not
[Page 4.] theſe neceſſary words of *liberum marita-*[4]*gium* (as the Lord *Cook* calls them) were uſed in any of thoſe grants, or that any of thoſe Perſons, with whom ſuch Lands were given, were Baſtards.

My Reply.

Here is another Trip of Sir *Thomas;* for I have quoted the Lord *Cook* himſelf in ſeveral Caſes for it: See my Anſwer to his *Defence of* Amicia, *pag.* 23, 24, 25, 26. and yet he is not aſhamed to ſay here, I quoted no Author for it: And I could yet produce a number of Caſes more, wherein the Law is altered without any Act of Parliament, if it were neceſſary.

2. To the Second: I produced thoſe ancient precedents to

ſhow, that thoſe words [*in liberum maritagium*] were not anciently ſo neceſſary in grants of free Marriage, as the Lord *Cook* would now have them to be; and then Sir *Thomas* ſaith, that I have not proved any of thoſe Perſons with whom ſuch Lands were given (in free Marri-[5]age) were Baſtards: *Sit liber judex*, as to that of *Geva:* See alſo my former Reply, *pag.* 38. where *Joan Princeſs* of *Wales* is clearly proved to be a Baſtard by the Teſtimony of moſt of our Hiſtorians; but none ſaying ſhe was a lawful Daughter, and that ſhe had Lands given her in free Marriage by King *John* her Father: See my Advertiſement to the Reader, at the end of my two ſaid Books; alſo my *Addenda*, pag. 3, 4. and my former Reply, *pag.* 25. [Page 5.]

Pag. 3. *Of his Anſwer to my two Books.*

Here he ſaith, I tell him *Lewellyn* Prince of *North-Wales* was Divorced from his Wife *Joan*, for which I can neither ſhew Author, nor Record.

My Reply.

I do not poſitively affirm it: the words in my former Reply, *pag.* 44, [6]are theſe — if ſhe were Re-married to *Audley*, anno 14. *Hen.* 3. then it is a ſure Argument that ſhe was Divorced; and whether ſhe was ſo Married or no, 14. *Hen.* 3. let the Record Vouched by *Vincent*, be the Judge. [Page 6.]

Here is another Trip of Sir *Thomas;* for he ſaith, that I can neither ſhew Author, nor Record: indeed *Vincent* doth not ſay ſhe was Divorced; but he ſaith, ſhe was Re-married to *Audley;* and ſo by conſequence ſhe muſt needs be Divorced, *Lewellyn* being then alive.

But I have now publiſhed an Advertiſement to the Reader at the end of my two ſaid Books, where *I* have ſet forth the Copy of that Record; and do find that *Vincent* hath clearly miſtaken the Record; for it proves *Robert de Audley* did Marry *Joan*,

Daughter of *Richard de Landâ*, but nothing at all of any Marriage with *Joan* Princeſs of *Wales*.

[Page 7.] Yet nothing hinders, but ſhe [7]might have been Divorced from *Lewellyn*, being taken in Adultery with *William de Brews;* and if Sir *Thomas* will allow the Note of Dr. *Powel* to be Authentical herein, *pag.* 315. of his Notes upon the Welſh-Hiſtory, *Lewellyn* had another Wife after *Joan*, called *Eva*, Daughter of *Fouk de Breant*, but had no Iſſue by her, as he ſaith; which could not be without a Divorce, unleſs we ſuppoſe *Lewellyn* Married after the death of *Joan*, for he ſurvived not *Joan* above two or three years; and then we find him Diſeaſed with the Palſey, and in a dying condition, *anno* 1237. See *Mat. Paris*, pag. 437. and therefore probably, if he were ſo Re-married at all, it was before that declining ſtate of his: But yet *I* will not poſitively affirm that *Joan* was Divorced.

Pag. 3. *Of his Anſwer* ibidem.

Here he ſaith, *I* have a fine way of Anſwering; for if *I* be [Page 8.] preſt o-[8]ver-much with any point of Law, then *I* will tell you of my own Authority, that the Law in ſuch Particulars is clearly altered, though *I* cannot tell how, nor at what time.

2. If it be a Record that puts me too hard to it, then *I* conceive the Roll from whence the Deed is written, is miſtaken in ſuch and ſuch words, and miſwrit therein from the Original.

3. If out of any Hiſtory you tell me any thing which *I* cannot Anſwer, then *I* will not ſuffer the words to be read as they ought to be Printed; but I will fanſie ſuch expreſſions as will beſt ſuit with my turn, and alſo diſparage the ſame Hiſtory, although in thoſe matters *I* had formerly ſaid *I* did chiefly follow the ſame.

My Reply.

Theſe are all nothing but Cavils; and whence theſe proceed, every man may judge.

1. Where do *I* ſay the Law is al-[9]tered on my own Authority, [Page 9.] and do not prove it by other Authority? it is his miſtake, and though *I* cannot tell when preciſely, nor perhaps others neither, yet it is plain ſuch particulars are altered, and ſuch alterations are not made in a day, nor all at a time; for they muſt have a long time of common practice through the Nation, before it become a common Law; and at laſt becomes a Law by general conſent and practice by degrees.

2. *I* never ſay the Roll is miſtaken, but where it is miſtaken; and *I* remember not that *I* ſay any Roll or Record at all is miſtaken, ſave either that of *(Donarium)* which *I* conceived was miſ-writ for *(Dotariun);* and it is ill chid of Sir *Thomas* (as we ſay Proverbially) when he himſelf conceives *(Donarium)* to be there miſ-writ for *(Dovarium) pag.* 13. or elſe that of *Bacon*'s Deed: See my Reaſons in my *Addenda*, pag. 23. for rectification of which, *I* was promiſed a ſight of the Original, but *I* could not obtain it.

[10]3. The third is alſo a great miſtake: for firſt, I have not [Page 10.] ſeen any thing out of any Hiſtory alledged, but what I have fully anſwered, as to the point in difference; nor do I hinder any words to be read as they ought to be Printed; but when there be plain errours in the Printing, and ſo proved to be errours by comparing ſundry other good Authors to the contrary, as *(Hugh)* Earl of *Cheſter*, for *(Randle)* Earl of *Cheſter* in the Welſh Hiſtory, *ſub anno* 1142. why may not I obſerve the errour which Sir *Thomas* would boulſter up by an erroneous Amendment, to ground ſeveral other groſs errors and miſtakes thereupon? It is moſt certainly a groſs miſtake either in the Printer or the Copy; and not miſtaken for (*Hugh*, Son to the Earl of *Cheſter*), but for (*Randle* Earl of *Cheſter*):

And then to ſay I diſparage the Welſh Hiſtory, or Dr. *Powel*, is another miſ-judging of me: all I ſaid was this — The Welſh Hiſtory is not exactly compoſed throughout, [11]nor proved by [Page 11.] good Authority; and as I believe it true in many things, ſo it hath ſome groſſe miſtakes; and ſo are ſome of Dr. *Powels* Notes

thereon full of errors, eſpecially in his abſurd Pedegree of the Earls of *Cheſter*, and in ſeveral other things: See my former Reply, *pa.* 94. And I believe every knowing man (who hath peruſed the ſame) will ſay as much: indeed there are few general Hiſtories but may have ſome miſtakes, and without diſparagement too to the Author.

Certainly, here are three or four extraordinary Trips of Sir *Thomas.*

Now there is nothing material here, further to be taken notice of, till we come to his nineth page.

Pag. 9. *Of his Anſwer to my two Books.*

Here Sir *Thomas* ſaith that I miſrecite his Argument; and that I ſay, that the Lord *Cook* ſaith thoſe words [*in liberum maritagium*] are ſuch words of art, and ſo neceſſarily [12]required, as they cannot be (underſtood) by words equipollent: ſo hard it is to get Sir *Peter* either to repeat or underſtand aright.

[Page 12.]

My Reply.

Parturiunt montes, naſcetur ridiculus mus: He ſaith, it is a hard matter to get me repeat aright; but for the repeating of thoſe very words of the Lord *Cook;* ſee Sir *Thomas Manwarings* Law-Caſes miſtaken, *pag.* 3. *pag.* 10. and *pag.* 14. in all which places I have repeated them aright: So it is no hard matter to get me repeat aright; but here indeed the word (underſtood) is miſ-writ for (expreſt) *pag.* 4. of my former Reply; which ſhews it ſelf to be a miſtake in the writing; and the very ſence here, would guide a man of reaſon into a rectification; but Sir *Thomas* will play at ſmall game before he ſit out.

And then he ſaith, I underſtand not aright: why ſo? Becauſe I do not ſay — by words equipollent, or amounting to as much.

[Page 13.] [13]Oh profound and material point! as though equipollent, or

amounting to as much, were not the ſame thing; or that there were more in the words (amounting to as much) than in the word (Equipollent): let him ſhew me the difference between them, if he can; ſave only one is a Lattin word, and the other Engliſh: ſo that when I had named the one, the other were not needful to be named.

Pag. 10. *Of his Anſwer to my two Books.*

Here he ſaith, *I* miſtake very much when *I* ſay — that Lands given in *maritagium; Habendum libere & quiete ab omni ſervitio verſus Capitalem Dominum, de me & hæredibus meis,...* &c. was a good grant in free Marriage, by the words of *Glanvil* in thoſe Ages, and as good as *in liberum maritagium):* Why ſo? becauſe *Glanvil* doth not there or any where elſe, ſay that Lands may be given in free Marri-[14]age by thoſe, or any other equipollent [Page 14.] words, without uſing the words [*in liberum maritagium*]: and unleſs he ſaith this, he ſaith nothing for Sir *Peter*'s purpoſe.

My Reply.

For this ſee *pag.* 54. of my former Reply, where *I* have proved it out of *Glanvils* words by ſure conſequence, which Sir *Thomas* hath not yet anſwered: *Sit Liber Iudex. Glanvil,* lib. 7. cap. 18. 'Tis true, thoſe very words here mentioned by Sir *Thomas,* are not in *Glanvil;* but Lands granted *in maritagium,* free from all Service, &c. (ſaith *Glanvil*) was a grant in free Marriage; and by ſure conſequence implyed there out of *Glanvil,* to be words anſwerable to the words *(in liberum maritagium),* which makes clearly for Sir *Peter*'s purpoſe againſt Sir *Thomas;* for ſuch a grant (ſaith *Glanvil*) was a grant in free Marriage, without telling us that the words *(in liberum maritagium)* muſt be ne-[15]ceſſarily uſed at all: So that Sir *Thomas* miſtakes himſelf here [Page 15.] very much, and not *I.*

Pag. 12, 13. *Of his Anſwer to my two Books.*

Here he writeth down *Saher de Quencyes* Deed, out of my Hiſtorical Antiquities.

In which Deed (ſaith he, *pag.* 13.) if *Donarium* were there miſwritten for *(Dotarium)*, it would not here ſignifie Marriage, but Dower; and he thinks alſo that the Tranſcriber probably did miſtake *(Donarium)* for *Dovarium;* the *n* and *u* being anciently written alike: but he ſaith alſo, he got a friend carefully to examine the ſame in one of the Couchir-books in the Dutchy Office in *Grays-Inn*, and the word is there *Donarium*, without any miſtake at all.

[Page 16.] [16]*My Reply.*

It is true, I did interpret *in liberum Donarium* in that Deed, as meant of a Jointure in my Hiſtorical Antiquities, *pag.* 132. but upon better conſideration *I* conceived it might be more properly interpreted here, and underſtood for free-marriage; in my former Reply, *pag.* 7, 8. and in my Book, ſtiled *Sir* Thomas Manwarings *Law-Caſes Miſtaken*, pag. 29. for finding *Dos* ſometimes anciently taken for Marriage, and finding the word *(liberum)* added here unto it, *I* did conjecture it might have been miſ-written in my Copy *in liberum Donarium*, for *in liberum Dotarium:* and ſo all one as to have ſaid *in liberum maritagium;* and the rather for that we find very rarely the word *in liberum donarium* ſo applyed; nor do we uſually ſay Lands are given in free Joynture, but in free Marriage.

[Page 17.] [17]But now it being in the Couchir-book, *in liberum Donarium* without miſtake, as Sir *Thomas* tells us, he got a Friend to examine it, it muſt needs be here interpreted for a free gift: for *Saher de Quency* Earl of *Wincheſter*, grants to *Robert de Quency* his Son and Heir four Mannours, *ad dandum in liberum Donarium Hawiſiæ Sorori Comitis Ceſtriæ, uxori ejuſdem Roberti.*

This was ſoon after the Marriage; for ſhe was now the Wife of *Robert*, and theſe Lands were given for a free gift to *Hawiſe* his Wife, which is all one as to have ſaid for a free gift in Marriage to *Hawiſe;* and a free gift in Marriage is all one as a gift in Free-marriage: add hereunto, that thoſe four Mannors, given *in liberum donarium*, as aforeſaid, accrewed to the Heires of *Hawiſe*, to wit, to *John Lacy*, Earl of *Lincoln*, in right of *Margaret* his Wife, Daughter and Heir of the ſaid *Robert Quency* & *Hawiſe:* which by Law ought to deſcend upon the Heirs of *Hawiſe*, being given [18]in free marriage: Whereunto alſo *Roger de Quency* (who ſucceeded Earl of *Wincheſter*, upon the death of the aforeſaid *Robert de Quency*, his Elder Brother without Iſſue Male) releaſed all his Right unto the Heirs of the ſaid *Margaret:* See my Hiſtorical Antiquities, *pag.* 271. whereas had thoſe Lands been given to *Hawiſe* in Dower or Joynture only, ſhe could but have enjoyed them for her life, and not to her Heirs. [Page 18.]

But whether is the more proper interpretation thereof in this place, let Learned men judge; I will not contend about it. Yet whereas *pag.* 15. Sir *Thomas* would have the Reader to judge of my Integrity, becauſe I did formerly interpret the words aforeſaid to be underſtood of a Joynture, and now upon more ſerious deliberation conceive the ſame to be meant for a gift in free marriage, or a free gift in marriage, having the word *liberum* joyned with it: I ſay it is hard to cenſure my integrity for it: for that is [19]well known to all the County where we both do live; I ſhall make no comparifons, for thoſe are odious, and favor of arrogancy. [Page 19.]

Again, Sir *Thomas* hath committed another Trip, *pag.* 10. where he expoundeth Mr. *Glanvils* words (when he ſpeaketh of gifts in frank-marriage) *cum aliquâ muliere* to be meant [with ſome woman]: which words he miſinterpreteth altogether; for it is there meant [with any Woman] not with ſome Woman: He hath the ſame errour in his Reply to my Anſwer, *pag.* 40.

Pag. 16, 17. *Of his Anſwer to my two Books.*

Here he ſaith, I tell him how he proves by comparing the Age of *Bertred*, that *Agatha* could not be the Daughter of the Second *William de Ferrare;* wherein (ſaith he) I am pittifully miſtaken, for he did goe about no ſuch thing; but he did ſhew *pag.* 3, 4, 5.
[Page 20.] that *Joane*, Wife [20]of *Lewellyn* could not be the ſame *Joan* which King *John* had by *Agatha.*

My Reply.

O pretty Subterfuge! hath he any proof at all here, that *Joan*, Wife of *Lewellyn* was not the ſame *Joan* which King *John* had by *Agatha;* but all his proof there bottomed on the Age of *Bertred*, which could not allow *Agatha* to be the Daughter of the Second *William de Ferrars* by *Bertred*'s Daughter; ſo as to ſuppoſe *Agatha* to be old enough to have Iſſue that *Joan* by King *John*, and that *Joan* to be old enough to be Wife of *Lewellyn*, Anno. 1204. which is a falſe ground taken from *Vincent:* but *Speed* ſaith, *Agatha* was Daughter of *Robert de Ferrars*, and I agree *Vincent* to be miſtaken therein: Let me ſee him prove the Princeſs of *Wales* to be no Daughter of *Agatha* by King *John;* what he ſaith here, is nothing to the purpoſe: See my former Reply, *p.* 18.

[Page 21.] [21]Pag. 22. *Of his Anſwer to my two Books.*

Here (after a long Oration, nothing at all material) he tells us — would any man think Sir *Peter* himſelf within a very few lines would be guilty of the like offence, which I unjuſtly charged him withal? and a little after — Sir *Peter* would diſtinguiſh between *maritagium*, and *maritagium Servitio obnoxium;* and ſay *maritagium* is two-fold, but doth not give the members of his diſtinction aright.

My Reply.

Here are two great Trips more of Sir *Thomas*, for I did neither charge him unjuſtly with that diſtinction, which any man may read in his book, nor am I guilty of the like offence, as he ſaith I am: Shew me, if he can, where I go about any ſuch a diſtinction as he here mentioneth, or ſay marriage [22]is two-fold, [Page 22.] and then give the members of my diſtinction ſo abſurdly as he there hath done; I wonder he is ſo diſingenious either to deny the one or affirm the other: See his Anſwer to my Addenda, *pag.* 7. and my former Reply thereunto, *pag.* 20, 21. I appeal to all Readers; and yet in the 19th. *pag.* of his Anſwer to my two books, he tells us, it is the want of my underſtanding which cauſeth me to blame him for what he there ſo ſaith, and then runs on in a long harangue to no purpoſe, telling us that *maritagium Servitio obnoxium* is the Elder Brother... *&c.*

Pag. 24. *Of his Anſwer to my two Books.*

Here he ſaith, that I indeed do tell him that thoſe Mannors *(Budiford* & *Suttehele)* were given to the ſaid *Lewellyn in libero maritagio:* But the Deed lately belonging to *Somerford Oldfield* Eſquire doth prove no ſuch thing, but doth only [23]prove that [Page 23.] the ſaid *Lewellyn* did miſtake himſelf, and did think that they were given him in free-marriage, when they were not ſo given.

My Reply.

Oh fine, a pretty Anſwer indeed! for though in the Deed it be ſaid — *Sicut Dominus Johannes Rex ea illi dedit in libero maritagio*] yet here (ſaith Sir *Thomas*) *Lewellyn* miſtakes himſelf, and thought it was ſo given, when it was not: it is not in the Deed *(mihi dedit)* but *(illi dedit)*, and by conſequence could not be miſtaken by *Lewellyn* only, if it were miſtaken; but by all others alſo then preſent, and eſpecially by the Writer of the ſaid

Deed: But whether was *Lewellyn*, and the Clerk that made the Deed, and all others then preſent, more like to know the truth hereof, then Sir *Thomas* now living 450. years after that Deed made: Every man may ſee the weakneſs of this Anſwer. Sure
[Page 24.] this may ſtand for a [24]Trip with a derry-down, but he hath ſo many of them, that I ſhall forget to count them all. Ere while *pag.* 3. when I am put hard to it, (ſaith he) then I ſay the Roll is miſ-writ: Very well; but here he denys the very words of the Deed, and avers againſt a Record, and yet gives no reaſon for it neither.

What follows *pag.* 26, 27, 28, 29. are all tedious things according to his cuſtom, and little or nothing to the point.

But *pag.* 26. and in other places elſe-where, when any thing is ſaid by him, either not true, or not to the point, then it is my ignorance that runs me upon miſtakes, that I cannot fathom what he or the Lawyers do ſay.

1. He ſaith, *pag.* 26. that if a man have Land given in free marriage with a Wife, he hath only *Cuſtodiam terræ cum uxore*, and therefore cannot diſpoſe of thoſe Lands to any Perſon from the right Heir.

2. So *pag.* 28, 29. he tells us that the Writ for the Livery of
[Page 25.] *Budiford* [25]to *Lewellyn* runs in theſe words, — *quod Johannes Rex ei dedit in maritagium cum Johanna*, &c. and (ſaith he) Livery would be needleſs in a gift of free-marriage, and therefore concludes, it muſt be only *in maritagio* given, not *in libero maritagio;* and ſo *Lewellyn*'s Deed to *John Scot* is miſtaken; and be it what it will, it will work nothing in this caſe.

My Reply.

1. To the firſt: For what he ſaith, that according to the ancient Lawyers in thoſe elder Ages, that Lands given with a Wife in free-marriage to a man, the Husband hath only the cuſtody of ſuch Lands with his Wife, and therefore cannot diſpoſe of any of thoſe Lands to any perſon from the right Heir by ſuch a Wife.

Yet we ſee here, that *Lewellyn* did grant away *de facto* to *John* the *Scot*, *Budiford* in free-marriage with *Helen* his Daughter, about [26]1222. which Lands King *John* gave unto him in free- [Page 26.] marriage, with *Joan* his Daughter, Mother of the ſaid *Helen*, by what right we cannot now tell, whether by the conſent of the right Heir by *Joan*, or other compenſation elſe-where given; but certainly it was ſo given, and *Helen* was right Heir to her Mother *Joan*, after the death of *David* her Brother, without Iſſue.

2. To the ſecond: As to the Writ of Livery concerning *Budiford*, running only *in maritagium;* it hinders nothing but that the grant to *Lewellyn* of *Budiford* might be *in libero maritagio;* as we ſee that of the Caſtle of *Elleſmere*, granted alſo to *Lewellyn* by King *John*, with his ſaid Daughter *Joan in libero maritagio*, by expreſs words: See the Deed at large in my Advertiſement to the Reader, at the end of my Book, ſtiled Sir *Thomas Manwarings* Law-Caſes Miſtaken; and yet the Livery of *Elleſmere* ſaith only — *quod dedimus dilecto filio noſtro Lewelino in ma-* [27]*ritagio filiæ noſtræ:* See Sir *Thomas Manwarings* Anſwer to [Page 27.] my *Addenda*, pag. 6. Now *maritagio* doth as well include free-marriage, as not free-marriage, according as the Deed runneth.

Pag. 30. *Of his Anſwer to my two Books.*

Here he ſaith, he thinks he can make good what he ſaid of my Partiality (which yet he will not ſpeak publickly) and that I will not be excuſed by that contradiction of mine; to wit, That admit I were never ſo much partial in what he chargeth me with (yet I hope what I have written, he finds it impartial to all, ſo far as I go or know) would this cure his uncivil expreſſions towards me in another thing? but he leaves out theſe laſt words of mine.

[28]*My Reply.* [Page 28.]

Let him find out a contradiction here if he can; but all his

ſhifts and cavils cannot prevail to cover the truth concerning *Amicia*, and which with all his art he cannot ſolidly refute. So having done with this Trip, I proceed to the reſt.

Pag. 32, 33. *Of his Anſwer to my two Books.*

Now he would fain juſtifie a former error of his, and ſhews me a Deed out of my own Book, *pag.* 143. (from which Book he fetcheth many things, but nothing will help his cauſe.) In which Deed, *Randal*, Duke of *Brittain*, & Earl of *Cheſter* granted to *Andrew*, Son of *Mabil*, & to his Heirs, ſundry liberties, *&c.* among which, it is there ſaid — *nec de querelâ aliquiâ in civitate Ceſtriæ, vel extrâ, reſpondeant in præſentiâ meâ, vel ſummi, Juſti-*
[Page 29.] *tiæ mei:** upon which he puts in the Margent a [29]ſpecial mark thus (* Note): and after he ſaith, Now let any Perſon judge whether there was not a chief Juſtice of *Cheſter* in thoſe Elder Ages.

But before *pag.* 32. he tells us moſt learnedly, that the word *Juſtitia* here, is of the *Maſculine Gender*, and gives us a rule out of the *Grammer* for it —

Maſcula nomina in a dicuntur multa Virorum, and was ſometimes in thoſe Elder Ages uſed for the Judge or Juſtice of *Cheſter*, which he believes I cannot deny.

My Reply.

No indeed, I cannot deny it; but why uſed for the Judge or Juſtice of *Cheſter*, more than other Judges in thoſe Ages? Surely it was Anciently uſed for any of our Judges: *Glanvil* mentioning the form of Original Writs, hath it thus — *quod ſit coram me vel Juſtitiis meis:* So alſo *Hoveden*, and other of our ancient Hiſto-
[Page 30.] rians uſed [30]*Capitalis Juſtitia Angliæ* for the chief Juſtice of *England:* But *Bracton* compiling a Book of the body of our Law in Latin, under King *Henry* the third, he changed the word *(Juſtitiis)* into *(Juſticiariis);* and ſetteth down the writs

accordingly — *coram Juſticiariis noſtris:* Since which time, in all Writs and Commiſſions upon Record, they have been ſtiled *Juſticiarij:* Lamberds Eirenarcha, *lib.* 1. *cap.* 1.

And then for his profound Obſervation, that *Juſtitia* is here of the Maſculine Gender according to the Rule —

Maſcula nomina in (a) *dicuntur multa virorum.* Yet he hath left out three or four of the next words following, which might fitly have been added to that book of his — *Ut ſcriba, aſſecla, ſcurra, & rabula.* But now for the words of the Deed: It is certain, that here Earl *Randle* calls the Judge of *Cheſter* — my chief Juſtice; and the words of the Deed before-mentioned, I con-[31]ceive runs thus in *Engliſh* — That the ſaid *Andrew* and [Page 31.] his Heirs ſhould not Anſwer concerning any Suit (or Complaint) entered in the City of *Cheſter*, or without, either in my preſence, or in the preſence of my chief Juſtice.

And it is a rare precedent (without a Parallel, I believe in this kind) that the Earl here calleth him — my chief Juſtice; undoubtedly for ſome reaſon here intended, and but accidentally neither; poſſibly in diſtinction from the Judges of his inferiour Courts: for certainly they were never called chief Juſtices of *Cheſter* in thoſe Ages by common appellation, as at this day they be called; neither then were there more Judges of *Cheſter* than one at a time, nor doth this example prove it otherwiſe, nor is the Judge here ſtiled — Chief Juſtice of *Cheſter;* only the Earl here calls him — my Chief Juſtice, ſpeaking as it were in his own perſon; nor will this at all excuſe the errour and vain glory of Sir *Thomas*, ſpeaking [32]ſo of *Rafe Manwaring*, and [Page 32.] calling him as at this day we call the Senior Judge of *Cheſter;* it was a Trip, it overſlipt him; but he will ſeldom acknowledge any errour.

Again, This Deed was made between the year 1188. and 1200. for all that while *Randle*, Earl of *Cheſter* aſſumed the Title of Duke of *Little-Brittain* in *France*, which Title we ſee he had given to him in this Deed: But it cannot be firmly collected

that *Ralf Manwaring* was Judge of *Cheſter* at that very time when this Deed was made; for he is there ſubſcribed by the name of *Ralf Manwaring* only, not ſtiled *Radulfo Manwaring Juſticiario Ceſtriæ* there, as he is in many other Deeds, and as he and all others were uſually ſtiled, while they were Judges; and what Sir *Thomas* would ſtretch to have it ſo out of my Hiſtorical Antiquities, it will not certainly follow out of my Notes that *Ralf Manwaring* was Judge of *Cheſter* all that time, from
[Page 33.] 1188. till *Philip Orreby* was Judge there; [33]nor eſpecially all the time, while *Randle* was Duke of *Brittain;* and therefore Sir *Thomas* cannot certainly conclude (as he doth *pag.* 34.) that *Rafe Manwaring* was Judge at that very time, when that Deed was made.

Pag. 35. to *pag.* 41. are things not worthy my taking notice of, nor pertinent to the main point, and have all formerly in my other books been Anſwered by me over and over again, and therefore I ſhall here paſs them by; although, if I would cavil (as Sir *Thomas* doth) at every pidling thing, I could find many errors therein.

Pag. 43. *Of his Anſwer to my two Books.*

Here he ſaith, he is very confident Sir *Peter* cannot prove, that perſons who were under age, did then uſe to joyn with their Mothers, and to give away their Lands of inheritance.

[Page 34.] [34]2. And then after a long harangue, and writing down of Mr. *Selden*'s words, which I had before cited, he ſaith *pag.* 45. (which is all the Anſwer he gives to my Precedent that is material) that Earl *Richard* confirmed the Hyde of Land which *Droco de Andeleia* had given to *Abbington-Church;* and a little after, addeth — what is this to the Caſe of *Hugh Cyvelies,* who did paſs away *Stivinghale* to the Biſhop of *Cheſter,* and his Succeſſors for ever?

My Reply.

I ſay it is the very ſelf-ſame Caſe, one as the other: for Earl *Richard*, and Earl *Hugh* do both joyn with their reſpective Mothers, both under Age; but now forſooth the difference he would put is this, that the one confirms another man's grant, the other grants away certain Lands for ever. I would fain know if a grant of Lands for ever by one under Age, and joyning with his [35]Mother, be invalid; why a confirmation of Lands, by one [Page 35.] under age alſo, and joyning with his Mother, would not be invalid likewiſe; but this confirmation of Lands for ever held firm, and the Lands continued to the Church of *Abbington* accordingly.

So we ſee how he doubts not but what is there ſaid, will give all men ſatisfaction, without rendring any Reaſon at all of the difference in thoſe two Caſes.

And I am very confident Earl *Hugh* could not be twelve years old when he joyned with his Mother in the grant of *Stivinghale;* and if the grant were made about the year 1156. to wit, about two or three years after his Fathers death, I rather think that Earl *Hugh* was not above eight years old when he joyned in that Grant.

But certainly Sir *Thomas* is far wide when he ſaith, *pag.* 45. that Earl *Hugh* was old enough to take *Melyeneth-Caſtle*, anno. 1142. or that he was 23. years old, *Anno* [36]1153. in which year [Page 36.] his Father dyed: moſt abſurd, and without any ground at all.

But ſince I writ this ſecond Reply, I have received a ſure Record that proves Earl *Hugh* could not be above three or four years old at the death of his Father, *Anno* 1153. and will lay aſleep for ever all thoſe falſe ſuppoſitions of Earl *Hugh*'s Age; whereof ſee more in my *Peroratio ad Lectorem* at the end of this my ſecond Reply.

Pag. 46. *Of his Anſwer to my two Books.*

Here he tells the Reader, that I gave him a Pedegree of the

Barons *de Monte alto:* In which I make the firſt *Robert de Monte alto* (who I ſaid lived in King *Stephen*'s time) to have Iſſue, two Sons, *Rafe* and *Robert*, who were afterwards ſucceſſively Stewards of *Cheſhire;* all which (ſaith he) is certainly true: [I could wiſh
[Page 37.] he would as ingeniouſly confeſs all other truths al-[37]ledged by me]; and then he writeth out a Deed of *Hugh Cyvelioc*, Earl of *Cheſter*, out of my Hiſtorical Antiquities; whereunto *Robertus Dapifer de Monte-alto* was a Witneſs.

1. And then *pag.* 48. he ſaith, this muſt needs be the firſt *Robert de Monte-alto;* and if this Deed of Earl *Hugh* was made immediately before the death of this *Robert*, then Earl *Hugh* was a great deal elder than his Wife *Bertred:* (why ſo?) For (ſaith he) though the ſaid *Robert* did live ſomething longer than Sir *Peter* doth take notice of, yet he thinks it cannot be proved that he was living any conſiderable time after *Euſtace* (who was Witneſs to the Grant of *Stivinghale*): and he knows no reaſon why we ſhould conclude *Euſtace* was ſlain immediately after he was a Witneſs to the other Deed, or that this *Robert* dyed preſently after he was a Witneſs to this Deed.

2. He ſaith, *pag.* 49. that he thinks it will appear that this
[Page 38.] Deed [38]was made in King *Stephen*'s time; for had it been made when *Henry* the Second was King, it would not have been here ſaid — *ſicut fuit tempore Henrici Regis;* but *ſicut fuit tempore Henrici Primi;* or elſe here would have been ſome other words uſed, to diſtinguiſh King *Henry* the firſt from the then King.

Pag. 49. Now King *Stephen* dying, 1154. and *Bertred* not born till 1157. it will from this Deed be clear, that if the ſaid *Hugh* had ſealed the other Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the leaſt 24 years older than *Bertred* his Wife.

My Reply.

Is not here a long Proſe of his running all upon ifs and ands, without the leaſt ground of truth?

1. To the firſt: I do remember that I have ſeen ſome proof that the firſt *Robert de Monte-alto* (as he calls him) was living 17. *Stephani:* [39]what then? why ſhould we conclude (ſaith he) that [Page 39.] *Euſtace* was ſlain immediately after he was a Witneſs to the one Deed, or that *Robert* dyed preſently after he was a Witneſs to this other Deed?

Is not here pittiful weak reaſons to bottom on? we find *Euſtace* ſlain *Anno.* 1157. So *Stow*, and other Hiſtorians: as to *Robert de Monte-alto* aforeſaid, *I* conceive he ſurvived *Hugh Cyvelioc: I* have not yet ſeen any thing to induce me to think he dyed before Earl *Hugh;* and this Deed of Earl *Hugh* to the Nuns of *Bolinton*, *I* believe was made far in the Raign of King *Henry* the Second, nor can he give any reaſon at all to the contrary, and we find not *Rafe de Monte-alto* a Witneſs, till *Randle Blundevil*'s time, and that muſt be either in King *Richard* the Firſt's Raign, or towards the very end of *Henry* the Second at ſooneſt.

2. To the ſecond: Let him prove this Deed to be made in King *Stephen*'s time, and *I* will burn my [40]book: as to his reaſon [Page 40.] of diſtinguiſhing of one King *Henry* from another, how many times do we find mention of the *Henrys* in old Charters, without diſtinguiſhing at all? Somtimes they are diſtinguiſhed, and ſometimes not; but not adding the word of *Henrici Regis nunc*, ſhews clearly it is meant of *Hen.* 1.

3. To the third: As he proves nothing from the Deed, nor when it was made, ſo his ifs ſignifie nothing; for Earl *Hugh* was certainly a Child under age, when he joyned with his Mother in the Deed of *Stivinghale.*

And his ifs are very pretty, if Earl *Hugh* made this Deed to the Nuns of *Bolinton*, immediately before the death of *Robert de Monte-alto* aforeſaid; and then you muſt take his other (if) too — if this Deed was made in King *Stephen*'s time, and then you muſt take his third (if) too — if *Robert de Monte-alto* dyed ſoon after King *Stephen:* what then? why then [41]Earl *Hugh* [Page 41.] muſt be a great deal older, at leaſt 24. years older than *Bertred* his Wife.

But if theſe (ifs) be all falſe ſuppoſitions, and if Earl *Hugh* did make this Deed towards the middle of the Raign of *Henry* the Second, and if *Robert de monte-alto* outlived Earl *Hugh*, (all which are more reaſonable to imagine than the other ifs): what then? We may then conclude Earl *Hugh* was not near ſo much older than *Bertred* his Wife, as Sir *Thomas* would ſuppoſe him: See what ſtuff he here produceth to prove nothing.

Pag. 49. *Of his Anſwer to my two Books.*

Here he ſaith, that whereas I pretend to have ſhewed that Earl *Hugh* could neither be ſo old as he would ſuppoſe him, nor yet that the ſaid Earl was born in the year of Chriſt, 1142. Sir *Thomas* Anſwereth, that any man who can but count 20. to
[Page 42.] wit, how long it is from 1109. to [42]1129. or from 1110. to 1130. if he looks on his *Defence of Amicia, pag.* 51. and on his Reply, *pag.* 61. may find that *Hugh Cyvelioc* might be older than he ſaith.

My Reply.

But whoſoever views his Computation in thoſe places, will find the ſame very wilde: every ſuppoſition upon the utmoſt poſſibility; and as here, ſo there, he goes all upon (ifs), which cannot encline any judicious man to a belief; & here he concludes too, but upon a bare poſſibility, That Earl *Hugh* might be older than he now ſaith; that is, at leaſt 24. years older than *Bertred* his Wife, which is certainly a great deceit of the Reader, to encline a belief that a thing is ſo, becauſe it is poſſible to be ſo: Doth he any where prove ſubſtantially that Earl *Hugh* was ſo much older than his Wife, more than what may be very ordinary with other men in the like Caſe, or reaſonably to ſuppoſe he had a for-
[Page 43.] [43]mer Wife? Shew me that if he can: I am ſure it cannot be proved; ſee my Anſwer to his defence of *Amicia*, pag. 48, 49. It appears clearly by the Record in the Exchequor at *Weſt-*

minſter, that Earl *Hugh* was but ſix years older than *Bertrey*, or thereabout, which daſheth out all his Ifs for ever: See more hereof in my *Peroratio ad Lectorem*, at the end of this my ſecond Reply.

Pag. 50. *Of his Anſwer to my two Books.*

Here he knocks me dead, and thinks now he proves *Amicia* no Baſtard for certain, — for he doubts I am no good Arithmetician, becauſe in my Hiſtorical Antiquities, *pag.* 137. I ſaid I was eight years older than my Wife, and he hath taken great pains to ſearch out the difference of our Ages, and finds I am not much above ſix years older than my Wife.

[44] *My Reply.* [Page 44.]

It is true, I there ſaid ſo, ſpeaking curſorily and over-haſtily without due examination; for I then conceived ſhe had been born in the eighth year of my Age; but it appears now ſhe was born in the ſeventh year of my Age; ſo that I am by exact account only ſix years and two moneth, and about two weeks older than my Wife.

But what is all this to *Amicia?* The Reader may ſee how he makes it his buſineſs to catch and carp at every thing material or not material.

Pag. 51, to pag. 60. *Of his Anſwer to my two Books.*

In all this, there is little or nothing material to the main point; but he ſpends much time in comparing ſundry ancient Authors, to ſhew that *Matthew Paris* is miſprinted in the place urged by me [45](to wit, in the Edition put out by Dr. *Wats*, 1640. *pag.* 79.) [Page 45.] where he ſaith *(William) Mandeveyle* was taken Priſoner at Saint *Albons, ſub* anno. 1142. for *(Geffrey) Mandeveyle.*

My Reply.

I will never excuſe an errour, nor deny a truth: *I* would I could ſay as much of Sir *Thomas:* indeed it is much that this very word ſhould be miſ-printed above other words in *Matthew Paris:* I believe neither Sir *Thomas,* nor any other ſcarcely, upon ſuch an accidental buſineſs could have ſuſpected it to be ſo, having lighted upon the place by chance, elſe I ſhould have made a ſtricter enquiry; but it had reaſon to put him upon an enquiry.

Yet where he ſaith, *pag.* 59. that I dealt deceitfully herein, and that I did it purpoſely: This is another Trip of Sir *Thomas;* for
[Page 46.] had *I* then known it to be miſ-printed, I would [46]never have urged it, at leaſt without a Note upon it.

However the miſ-printing of *(Hugh)* Earl of *Cheſter,* for *(Randle)* in the Welſh Hiſtory, *pag.* 197. holds firm for ever: and Sir *Thomas* confeſſeth it miſ-printed in this his Anſwer, *pag.* 52. very probably in the latter Copies, the letter (*R*) ſtanding for a word in the Original book, might be miſ-written (*h*) in the Copy; which was ſuppoſed to be *Hugh,* or elſe for certain the Original was miſtaken.

But for all this, Sir *Thomas* is ſo far from an ingenious Confeſſion herein, that he will juſtifie his abſurd errour of computing Earl *Hugh* to be 41. years old when he married *Bertred;* & this he grounds upon the *Errata* at the end of Doctor *Powels* Notes on the Welſh Hiſtory aforeſaid, where it is ſaid we muſt read — *pag.* 197. *line* 16. *Hugh* Son to the Earl of *Cheſter.*

Which amendment is certainly as far from the truth, as that
[Page 47.] already Printed, and it is very queſtion-[47]able whether the ſaid Earl *Hugh* ever lived to be 40. years old, for he dyed *Anno Domini,* 1181. and ſuppoſe we, that he was eight years old when his Father dyed *Scilicet,* 1153. (which *I* believe is as much as by reaſonable account any indifferent perſon can well judge him ſo to be) yet would Earl *Hugh* be but 36. years old when he dyed, *Anno ſcilicet* 1181. and if he were twelve years old at the death of his Father (which *I* am confident can never be proved by

good Authority) yet would Earl *Hugh* be but 40. years old when he dyed: See what a ſhift Sir *Thomas* would now make, but to ſuppoſe Earl *Hugh* to have a former Wife, which certainly he never had; but it appears now by a Record, that he dyed about the Age of 32.

Again, Sir *Thomas* ſaith, *pag.* 51. that *I* go about to diſparage Doctor *Powel* all *I* can, and that *I* will not ſuffer the Welſh Hiſtory to be read, as it ſhould have been Printed; as alſo *pag.* 52. that *I* will now diſparage the ſaid Hiſtory, although in [48]my Hiſtorical Antiquities touching the Kings of *Wales*, *I* did chiefly follow the ſame. [Page 48.]

This is another unkind reflection: *Sit liber Judex*, pag. 94. of my former Reply; my words are theſe — As *I* believe it [that is the Welſh-Hiſtory] to be true in many things, ſo it hath alſo ſome groſs miſtakes; nor is it at all proved by good Authority, or exactly compoſed through-out; nor ſhall you therein from the beginning find all the Wives, Children, and Baſtards of the Ancient Kings and Princes of *Wales* clearly Recorded; and ſo are Doctor *Powels* Notes thereon full of Errors, and eſpecially in his abſurd Pedegree of the Earls of *Cheſter*, and in ſeveral other things. See *page* 8. *ſupra.*

Here is nothing but what every knowing man (who doth ſeriouſly peruſe the ſame) will acknowledg to be true; and ſome miſtakes may be, and are in the writings of very Learned men, and yet no great [49]diſparagement neither: and I do confeſs alſo, that I followed the Welſh-Hiſtory in the Princes of *Wales*, for I had no better, nor other to follow. [Page 49.]

Pag. 60. *Of his Anſwer to my two Books.*

Having now concluded his Anſwer to my former Book, he tells us that in my Latine Epiſtle to the Judges (which he ſuppoſeth to be mine, though I vouchſafe not to ſet mine name thereto) I ſaid he was the firſt Inſtigator of this Controverſie; but whether

that be ſo or no, he refers the Reader to his Epiſtle before his *Defence of Amicia,* and to the ſecond and third pages of his Reply.

My Reply.

But what Sir *Thomas* ſaith there, was not the firſt time of this Controverſie between us: For he ſaith in that Epiſtle, that if I [Page 50.] would have [50]delivered what I did conceit about *Amicia* as an uncertainty only, then I knew he would have reſted ſatisfied with the judgment of thoſe many knowing perſons, who diſſented from me in opinion therein.

But this was a little before my Hiſtorical Antiquities were Printed; nay he came to *Tabley* †alſo, purpoſely to deſire me (hearing then that my Book was about to be Printed) that I would put *Amicia* under the Title of the doubtful Iſſue of Earl *Hugh;* when I told him that I thought it not fit to put down in my book any ſuch third title of doubtful Iſſue, for ſhe muſt certainly be either lawful or unlawful, which method *I* had obſerved in the reſt. I told him alſo that it was not at all doubtful unto me, for in my judgment ſhe was certainly a Baſtard: And then he ſaid, if I did place her under the unlawful Iſſue of Earl *Hugh*, he would write [Page 51.] againſt it, which afterwards he did; [51]and *I* believe it had been as good to have let it alone.

† About 1672.

But before this, †we had long entercourſe (ſome years before) by Papers between us upon this Controverſie, which Papers *I* have yet by me; and which (when my Book was in Printing) he deſired I would not print any of them without his conſent, and *I* promiſed *I* would not, and *I* kept my word with him; and had it not been for thoſe paſſages betwixt us, *I* had not ſaid near ſo much of it in my book as *I* did, and ſo much for this. See my Anſwer to the *Defence of Amicia*, pag. 3.

† 1664 Alſo 1672.

Pag. 60. *Of his Anſwer to my two Books.*

He tells us alſo in the ſame page, that I do not put the queſtion of Law aright: but the point muſt be otherwaies proved then by ſuch a frivolous queſtion as mine is.

[52] *My Reply.* [Page 52.]

I am ſure *I* know not how to put it clearer to the point; *videlicet*, whether Lands in thoſe Ages might not by the ancient Law be given in free-marriage with Baſtards? for Sir *Thomas* ſaith, the Deed of Services in frank-marriage with *Amice*, proves ſhe was no Baſtard, becauſe (ſaith he) the Law will not allow ſuch a grant with a Baſtard: *I* ſay, though at this day the Law will not allow it, yet it would then allow ſuch a grant in the Age when *Amicia* lived, as the Law was then taken: muſt not now the queſtion be — whether the Law in thoſe Ages would ſo allow it, or no?

And yet it is no ſure Argument to prove *Amice* no Baſtard, though the Law ſhould not then allow ſuch a grant; as to argue thus — *Amice* had Lands given with her *in libero maritagio*, ergo, *Amice* was no Baſtard, for many irregular Deeds may ſometimes paſs, which in ſtrict-[53]neſs of Law might not prove authentical: [Page 53.] But *I* conceive the Law in thoſe elder Ages would and did allow ſuch grants; and we plainly ſee he waves the queſtion, and will not abide the teſt; and it may ſuppoſe too, that the Opinions of ſome Lawyers (which he brags on in his books) were procured by putting off a wrong Caſe.

I will alſo agree with him to put the other Caſe to the Judges, as he would have it put; *videlicet*, whether the Law be not now altered in this and ſundry other particulars, from what it was in elder Ages, and that without any Act of Parliament? for otherwiſe Lands would now paſs with Baſtards legally *in libero maritagio*.

Pag. 61. *Of his Anſwer to my two Books.*

Here he ſaith, that if *I* had been ſo converſant in Divinity, as *I* would have the Judges to believe, it ſeems ſtrange to Sir *Tho-*
[Page 54.] *mas* that [54]*I* had not learned my duty better to my deceaſed Grand-mother; for we are bound to Honour all our Parents, mediate or immediate, living or dead; and ſo compares my writings of theſe books to the wicked act of *Cham* in the Scripture, who divulged the ſhame of his Parent.

My Reply.

In the firſt place, let me obſerve to the Reader, that this is he who oft blameth me for miſ-repeating, and yet runs into the ſame errour himſelf, and tells us here, that *I* would have the Judges to believe that *I* am much converſant in Divinity; let him ſhew me where *I* ſay ſo, if he can, or that *I* make, or ſay, that *I* am converſant in Divinity; my words are — *I* prefer Divinity above all other Studies, this is far from ſaying, *I* am converſant in Divinity.

In the next place, this act of mine cannot by any rational
[Page 55.] man be ſaid to be like that of *Cham*, for he *re-*[55]*vera*, ſaw his Fathers Nakedneſs, and did not cover it, but told his Brethren without: now *I* could not ſee my ſaid Grand-mother's nakedneſs in that ſence, who dyed above 450. years agoe, nor will any man ſay, but himſelf, that *I* have uttered any ſcornful or diſgraceful words at all againſt her.

Expoſitors on the Fifth Commandment, tell us, it includes in it the honouring of Kings and all in Authority over us, as well as our natural Parents, to whom we owe honour and reverence in like manner.

And tell me, were ever any of thoſe worthy Perſons or Hiſtorians, who have commemorated the Wifes and Concubines, Children and Baſtards of our Kings of *England* in their Hiſtories, ever tearmed *Chams* for the ſame? Nay, doth not *Moſes*

himſelf, in his Hiſtory of *Geneſis*, chap. 38. Record the Whoredom of *Judah* (who was great Uncle to the Father of *Moſes*) with *Thamar*, his Daughter in Law, [56]and alſo her Baſtard-Twinns, [Page 56.] *Phares* and *Zarah?* Nay, are not theſe Twinns reckoned up in the ſacred Genealogy, *Matthew*, Chap. 1.

How many great and moſt honourable Families have been deſcended from Baſtards, Kings, Dukes, Earls, and others?

I have heard that King *James* uſed to ſay, it was a good Family that had neither Whore nor Thief a Kin to it: *I* am ſure it is a rare Family that never had any Baſtard.

But Sir *Thomas* ſaith, that in ſome reſpects *I* have exceeded that Pattern of *Cham*, †though *I* have done nothing at all like that Act of *Cham; I* am ſure he is *Kim-Kam* from the point, but he forgets his own duty, as to revilings, 1 *Cor.* 6. 10. and follows not the Pattern of *Michael* the Arch-angel, who durſt not take up a railing accuſation againſt the worſt of Antagoniſts, *Jude*, verſ. 9. and ſo much for the Caſe of Divinity, which he miſtakes as well as his Law. It is [57]as Lawful for any Hiſtorian to Record the Baſtards, as [Page 57.] Lawful Children: It is an error not to do it.

† *pag.* 62.

Pag. 62. *Of his Anſwer to my two Books.*

1. Here he ſaith, that in the ſecond book which *I* direct to all the Judges of *England*, it ſo falls out that there is nothing therein, but what is in my former books, and is already Anſwered; though if there had, he ſhould not have preſumed to have given any Anſwer thereto, becauſe thoſe learned Perſons know well enough what the Law was and is, in all particulars.

2. How-ever he cannot but obſerve how ſlightly *I* ſpeak of the Lord *Cook* in my 48. *page.*

3. And alſo, how *I* have ſuch light expreſſions in my book directed to the Judges, as he believes were never uſed before by any Perſon of diſcretion to ſuch Reverend and Learned men; no wonder therefore if I ſpeak courſely of him, [58]and tell him of [Page 58.] ſo many impertinencies.

My Reply.

1. To the firſt, *I* believe there is ſomething in that Second book, which is not in my former books, nor yet anſwered by him; and though the Learned Judges know what the Law was and is, better than either of us; yet we may with modeſty offer what we conceive is right to their more grave judgments; but it is a good excuſe.

2. To the ſecond, *I* do not ſpeak ſlightly of the Lord *Cook* in my 48. *page*, nor any where elſe; my words there are theſe,— As for the Lord *Cooks* citing of *Bracton* or *Glanvil*, in the Margent, as Authority, for what he there ſaith, if he maketh a falſe quotation, or ſuch, as is not to the point, neither *I* nor any man elſe are bound to believe the Lord *Cook* more than any other.

So let the Reader judge whether this be not another Trip.

[Page 59.] [59]3. To the third, I conceive *I* have no ſuch light expreſſions that might not be uſed to our light Controverſie, or before Learned Judges, nor yet ſuch as were never before uſed by any perſon of diſcretion, as he alledgeth: he might have done well to have ſhewed what thoſe expreſſions were; but perhaps, if they had been uſed by ſuch a diſcreet Perſon as himſelf, then they would not have been accounted light expreſſions, but rather plain to the Point, not rude at all.

Pag. 63. *Of his Anſwer to my two Books.*

He ſaith here in the very Concluſion of his book — whether he be guilty of thoſe [Impertinencies] or untruths, or of that opprobrious Language which *I* do charge him with, let the indifferent Reader be judge; and whereas it appears that *I* am reſolved to have the laſt word, though *I* have nothing new to

[Page 60.] ſay; and that my writing again [60]be contrary both to my duty to my Deceaſed Grand-mother, and to my promiſe in Print: He declares that if what *I* ſhall write hereafter be no more to the purpoſe than what *I* have ſaid in thoſe two laſt books, that he will not appear in Print againſt me any more.

My Reply.

To all which *I* ſay, that *I* do not know that *I* have any where at all charged him either with Impertinencies or Untruths, but what are ſo charged juſtly by me, that *I* can ſuddenly call to remembrance.

And for opprobrious Language (wherein this laſt Anſwer of his far exceeds.) *I* have only this to add for my ſelf, that in my Anſwer to his *Defence of Amicia*, *I* think no man can ſhew me any one uncivil expreſſion in the whole book; but afterwards, when he had in his following books taxed me unjuſtly in many things, and carped at every thing in mine, Pertinent or Imperti-
[61]nent, *I* confeſs *I* was more ſevere in my expreſſions in my [Page 61.]
latter books, but he led the way; what *I* have ſaid, was but in vindication of my ſelf, for my Reputation is as dear to me as his can be to him; and though my expreſſions ſometimes may ſeem tart, yet not ſo opprobrious neither as he makes them; had he kept cloſe to the point, and avoided his Calumnies and Cavils, and confeſt his Errors more ingeniouſly throughout, *I* ſhould neither have had occaſion to retort, nor have Anſwered to them.

And what *I* have written above my firſt intention, he hath forced me thereunto.

But now he will appear no more in Print againſt me, if what *I* ſhall write hereafter be no more to the purpoſe than what *I* have ſaid in thoſe two laſt books.

Whereunto *I* ſay, that for certain there is ſo much already ſaid
[62]to the purpoſe in them, as is not yet ſolidly and ſubſtantially [Page 62.]
anſwered by him; and herein I ſubmit my ſelf to all Ingenious Readers.

Mobberley, May 28.
1675.

1390794

[63]PERORATIO

[Page 63.]

AD

LECTOREM.

SInce I writ this Second Reply, *I* am credibly informed that Sir *Thomas* did write to ſome of his Friends about *May* or *June*, Anno Domini, 1675. to this or the like effect. —

I hope now the Conteſt between Sir Peter *and me will be at an end; for Mr.* Dugdale, *in his* Baronage of *England*, page 41. *hath delivered his Opinion on my ſide: and Sir* Peter *having appealed to the Judges, Mr.* Dugdale *thereupon did move them in the Caſe; and they upon* [64]*mature debate determined that* Amicia *was no Baſtard. I have ſeen his laſt Sheet, which I have anſwered, but ſhall not yet Print it.*

[Page 64.]

1. This Letter was ſhewed up and down *Cheſter*, purpoſely to delude the eaſie multitude; for ſince he cannot demonſtrate or ſupport the legitimacy of *Amicia*, either by good Reaſon or Authority, Sir. *Thomas* uſed this ſecret practice to gain a belief of his Cauſe, as ſupported by Opinions; whereas in truth there is no ſuch thing as a mature debate by our Reverend Judges in the Caſe of *Amicia;* for as yet the Caſe in Law is not agreed upon by both ſides, how then can there be a mature debate, or determination of the Controverſie? for Sir *Thomas* faith in his

Anſwer to my two books, *pag.* 61. that the point muſt be otherwiſe proved than by ſuch a frivolous queſtion as mine is; and a little before *pag.* 60. he ſaith that in the Epiſtle Dedicatory,
[Page 65.] wherein I appeal to the Judges, I do not put [65]the queſtion aright; whereas there can be no other point of Law to be reſolved as to the Controverſie in hand, but this,—Whether Lands in thoſe elder Ages might, and did Lawfully paſs with Baſtards *in libero maritagio*, or no? That they might, and did ſo paſs, I have before in my other Books clearly proved as well by the very words of *Glanvil* himſelf, and the Law then no where diſallowing the ſame; as alſo by three ſure Precedents of thoſe Ages.

But becauſe Sir *Thomas* takes this upon truſt from Mr. *Dugdale*, I ſhall here in publick unmask that Letter more fully, to the undeceiving of all men.

2. As to the Opinion of Mr. *Dugdale*, it is true, he hath delivered his opinion for the Legitimacy of *Amicia*, in his Book of the Baronage of *England*, newly Publiſhed, *Tom.* 1. *pag.* 41. And it is no more than what Sir *Thomas* formerly told us in his books,
[Page 66.] That he was of that judgment before he publiſhed his [66]ſaid book of the Baronage: What then? many very wiſe and knowing men have declared their Opinions with me, that ſhe was a Baſtard; both Divines and Lawyers, and other grave and underſtanding men; but I ſhall examine theſe things more particularly.

3. And in the firſt place, I ſhall always deſire to be underſtood without the leaſt detraction from the honour and due praiſe of Mr. *Dugdale*, of whom I have ever had a good eſteem, as a moſt diligent and indefatigable ſearcher of the Records and Antiquities of our Nation: *Sed Bernardus non videt omnia;* nor ſhould I now have mentioned him at all for his opinion herein, but that Sir *Thomas Manwaring* brings him here upon the Stage.

Only we may by the way take notice, that ſome years agoe Mr. *Dugdale* did draw up Sir *Thomas Manwaring*'s Pedegree; wherein he puts *Amicia*, the Wife of *Rafe Manwaring*, without
[Page 67.] her due di-[67]ſtinction (as I conceive) of a Baſtard, and is therefore

the more concerned to ſtickle for Sir *Thomas* in this Conteſt between us: So that formerly he conſulted ſome Lawyers for their Opinions in this Caſe of Hiſtory; for whether Baſtard or no Baſtard hath nothing of Law in the Caſe, or whether *Hugh Cyvelioc* Earl of *Cheſter*, had any former or other Wife beſides *Bertra?* theſe are queſtions to be reſolved by Hiſtory, Records, and Reaſon; but Mr. *Dugdale* would now ſupport his opinion with a point of Law, and therefore moved ſome Lawyers for their opinions; but how the Caſe was ſtated, no body but himſelf knows, nor what the point of Law was, wherein they delivered their opinions: and methinks it argued ſome doubt within his own breaſt, that ſhe was a Baſtard; otherwayes why ſhould he conſult any Lawyers in the caſe: and in truth, let the Law be what it will, ſhe was certainly a Baſtard, which to my poor reaſon, is as plain [68]as the Sun when it ſhines; but it ſeems he was ſatis- [Page 68.]
fied with the Opinions of thoſe Lawyers, that ſhe was Legitimate, becauſe (ſaith he) it is a known *Maxime* in the Law, that nothing can be given in Frank-marriage to a Baſtard: but this *Maxime* is to be underſtood with a due diſtinction of the times and ages, otherwiſe it will fail; but I ſhall anon ſpeak more of this, and of his moving the Judges in the Caſe; wherein I ſhould be glad to ſee what Caſe he put, and the reſolutions of our Reverend Judges thereon, under their hands; in the mean time *I* ſhall go on with Mr. *Dugdale*'s Opinion, whereon Sir *Thomas* ſo much depends.

4. In his ſaid *Book* of the Baronage of *England*, *pag.* 34. b. he calls *Robert* and *Ottiwel*, two Illegitimate Sons of *Hugh* (Sirnamed *Lupus*) Earl of *Cheſter;* wherein he is to be commended for ſpeaking out, for ſo they were without all doubt: Howbeit, *I* find not any Author hitherto, who have Writ-[69]ten of our ancient [Page 69.]
Earles of *Cheſter*, Commemorating either theſe, or any other at all, as Baſtards, to any of our ancient Earls of *Cheſter;* neither *Brooks* in his Catalogue of Nobility, nor *Vincent* in his Corrections of *Brook*, nor *Milles* in his Catalogue of Honour, nor *Fern* in his *Lacyes-Nobility*, nor *Powel* in his Notes on the Welſh-Hiſtory, *pag.* 294. nor yet Mr. *Dugdale* himſelf, in his

Warwick-ſhire; till here in his late book of the Baronage, he now ſpeaks out a little more.

5. But yet in the ſame page, he calls *Geva* (Daughter of *Hugh Lupus*, and Wife of *Geffry Ridel*) a Legitimate Daughter not to be doubted of, becauſe ſhe had *Drayton-Baſſet* given her in Free-Marriage by her Father, which could not have been ſo beſtowed on a Baſtard; as our Learned Lawyers do clearly affirm; thus Mr. *Dugdale.*

Which very Deed of *Drayton-Baſſet* to *Geva*, I have produced
[Page 70.] in my *Hiſtorical Antiquities*, pag. [70]112. 113. as a ſure Precedent that Lands did paſs with Baſtards in Free-marriage in thoſe more ancient Ages, as well as with lawful Daughters; and have fully proved *Geva* to be a Baſtard out of an Hiſtorian of good Credit, and Contemporary with *Geva*, by ſure Conſequence out of his words: See my Anſwer to the Defence of *Amicia*, pag. 33. to pag. 47. which Reaſons and Authorities, are not yet ſolidly or rationally Anſwered by any, and which I ſhall have occaſion further to mention, when I come to the Caſe of *Amicia* truly Stated.

And here by the way, we may take notice, that theſe two Sticklers for *Geva*, Sir *Thomas Manwaring*, and Mr. *Dugdale*, agree not in their points of Law; for Sir *Thomas* will not have theſe words *(in libero Conjugio)* uſed in the Deed of *Drayton*, to be good in Law, to make it a gift in Free-marriage, and only to convey but an Eſtate for life unto *Geva;* becauſe the Lord *Cook*
[Page 71.] affirms that a gift in Free-marriage [71]muſt be ſtrictly tyed up to the words *(in libero maritagio)* and no other: See more of this in my firſt Reply to Sir *Thomas*, pag. 4. to pag. 15.

But Mr. *Dugdale* and his Lawyers take the words *(in libero Conjugio)* in the Deed of *Drayton* to be a good gift in Free-marriage; and ſo without doubt it was, and in thoſe Ages as good as *in libero maritagio;* and did convey an Eſtate of Inheritance to the Heirs of *Geva*, who enjoyed *Drayton* accordingly.

So we ſee Sir *Thomas* and the Lord *Cook* are of one Opinion, and Mr. *Dugdale* and his Lawyers are of another opinion; both

of them againſt the Baſtardy of *Geva*, which yet is clearly collected by ſure conſequence out of *Ordericus* an Hiſtorian, of very good Credit, and contemporary with *Geva*, who knew the truth better than any man now living can poſſibly know, and needeth no point of Law to prove the ſame, and cannot be diſ-[72]proved [Page 72.] by any point of Law whatſoever.

6. As to *Amicia*, he hath theſe words in his ſaid Book of the Baronage, *pag.* 41. — That ſhe was Daughter of Earl *Hugh*.

1. It ſufficiently appears, not only from the grant of two Knights Fees with her in Frank-marriage, to *Rafe de Meſnilwarin*, where he ſo termeth her, but by another Deed of *Roger de Meſnilwarin*, her Son, wherein he calls *Randle*, Earl of *Cheſter*, his Uncle, who was Son of the ſaid Earl *Hugh*.

2. As to her Legitimacy, I do not well underſtand how there can be any queſtion, it being a known Maxime in Law, that nothing can be given in Frank-marriage to a Baſtard.

3. The point being then thus briefly cleared, I ſhall not need to raiſe further Arguments from Probabilities to back it, then to deſire it may be obſerved that *Bertra* (whom I conclude to be a ſecond Wife) was Married unto him when [73]he was in years, and [Page 73.] ſhe her ſelf very young: So that he having been Earl no leſs than 28. years, it muſt neceſſarily follow that this *Bertra* was not born till four years after he came to the Earldome; nor is it any marvel he ſhould then take ſuch a young Wife, having at that time no Iſſue-male to ſucceed him in this his great Inheritance: thus Mr. *Dugdale*.

1. To all which I ſay, firſt, That it plainly appears ſhe was Daughter of Earl *Hugh;* but that ſhe was a Lawful Daughter, that no where appears; nor did the Earl in the Deed mentioned, grant her two Knights-Fees in Frank-marriage, as is here alledged; but he granted with her in Frank-marriage, the Service of *Gilbert*, Son of *Roger;* to wit, the Service of three Knights-Fees, by doing to the Earl and his Heirs, the Service of two Knights-Fees; ſo that the Earl releaſed only the Service of one Knights-Fee by this Deed; too mean a Portion [74]for a Lawful [Page 74.]

Daughter of the Earl of *Cheſter*, eſpecially for the ſole Daughter and Heir by a former Wife, as Mr. *Dugdale* ſuppoſeth her to be; ſo that *res ipſa loquitur*, whereas the four lawful Daughters of Earl *Hugh*, by his Wife *Bertred*, Married four of the greateſt Earls then in *England*, and ſhared all the Lands of the Earldome of *Cheſter;* and ſure the Eldeſt Daughter by a firſt Wife (if the Earl had a former Wife) ought to have had as good a Portion of Lands or Money, as any of his Younger Daughters by a latter Wife, which for certain *Amicia* never had, nor claimed.

2. To the ſecond, the *Maxime* of Law, that nothing can be given in Frank-marriage to a *Baſtard*, is to be underſtood of the Law, as it is now taken in theſe latter Ages; but that the Law was otherwiſe taken in the time of *Amicia*, and thoſe more ancient Ages, I have proved in my former books, both from the words
[Page 75.] of *Glanvil*, who was Chief Juſtice of *England*, and lived in [75]the very Age with *Amicia*, as alſo by three clear Preſidents of thoſe former Ages; and ſhall have further occaſion to mention the ſame in the Caſe of *Amicia* hereafter following, which I have briefly and truly ſtated by it ſelf, for the better apprehenſion of all men.

3. To the third: Here Mr. *Dugdale* concludeth *Bertra* to be a ſecond Wife; but doth not, nor cannot in the leaſt prove a former Wife; much leſs *Amicia* to be the Daughter of a former Wife.

And as to his Argument of Probability, *I* deny abſolutely that Earl *Hugh* married *Bertra* when he was in years; for though he were Earl three or four years before ſhe was born, yet it follows not that he did Marry her when he was in years, for he came to be Earl in his Infancy.

But that I may lay this Argument of Probability (as he calls it) aſleep for ever, take this Record here following, out of the
[Page 76.] Roll *de Dominabus pueris, & Puellis*, re-[76]maining in the *Exchequer* at *Weſtminſter:* Which Roll Mr. *Dugdale* hath there alſo cited in the Margent, to prove the Age of *Bertrey*, though not in the Words which I have here more at large expreſſed: I ſay,

take here the true Coppy of the Record *Verbatim*, which my Friend hath twice examined for me, to prevent Miſtakes: *viz.*

Scaccarium apud *Weſtminſter.* { *In Rotulo de Dominabus Pueris, & Puellis, de anno* 31. Hen. 2. *in Cuſtodia Rememoratoris Regis Exiſtente, continetur (inter alia) ut Sequitur,* &c.

Com. Lincoln.

Balteſlawe - Wapentak.

Matilda Comitiſſa Ceſtriæ eſt de donatione Domini Regis: et fuit fillia Roberti *Comitis* Gloceſtriæ *filij Regis* Henrici *Primi, et eſt* L *annorum, & amplius: Hujus villæ Recepit Comitiſſa his* VIII. *annis: Ip-*[77]*ſa tenet* Wadinton *in dote de feodo Comitis* [Page 77.] *Ceſtriæ: et firma eſt* XXII.[libr.] *per annum: dicta villa valet per annum* XL. *lib: Cum hoc inſtauramento, Scilicet,* II *Carucis,* IIII *Vaccis,* I *Tauro,* IIII *Suibus,* I *Verre,* D *ovibus, quæ ibi ſunt:* ... &c.

Com. Lincoln.

Jeretre - Wapentak.

Bertreia *Comitiſſa, filia Comitis de Evereous, uxor* Hugonis *Comitis* Ceſtriæ, *eſt de donatione Domini Regis; & eſt* XXIX *annorum. Terra quam Comitiſſa habet,* XL. *lib. Maritagium; & defectus ſunt ultrà mare, ideo neſciunt Juratores quid valeant. Dominus Rex præcepit, quod ipſa haberet* XL *libratas terræ Domini ſui in* Beltesford, Hemmingly, *&* Duninton: *licet non habuit niſi* XXXV *libratas, &* X *ſolidatas. Quiá (ut dicunt) dicta terra non poteſt plus valere cum Inſtauramento quod comitiſſa ibi recepit; Scilicet,* V *Carucis,* CCCXLI *Ovi-*[78]*bus,* X *Suibus,* I *Verre. Sed* [Page 78.] *ſi in* Duninton *apponerentur* CC *oves, &* X *ſues, &* I *verris, tunc Valeret.*

So that, by this Record it clearly appears, that as *Bertrey* was twenty nine years of Age, 31. *Hen.* 2. 1185; So *Maud* (the Mother of *Hugh Cyvellioc*, Earl of *Cheſter*) was aged fifty years, *Anno Domini* 1185. 31. Hen. 2. *&c.*

And ſo *Maud* muſt be born *Anno* 1135. and *Bertrey* muſt be born *Anno* 1156.

Now it cannot be imagined, that *Maud* could have a Child before ſhe was fifteen years of Age: And then Earl *Hugh* could not be born till the year 1150. at ſooneſt. And by Conſequence, Earl *Hugh* was about three years old when he came to be Earl; and about ſix years older than his wife *Bertrey.*

What a monſtrous and wild Computation then hath Sir *Thomas Manwaring* made, and upon utmoſt Poſſibilities too, ſuppoſed, in his Anſwer to my *Addenda*, pag. 50, 51. [79]where he would have Earl *Hugh* to be 41. years old when he marryed his Wife *Bertrey*, which Marriage he ſuppoſeth to be *Anno* 1171? So alſo in his Anſwer to my two Books, *pag.* 49. Wherunto ſee my *Firſt Reply*, *pag.* 91. to *pag.* 94. See alſo in my *Second Reply*, to his Objection in that Point, mentioned here a little before.

[Page 79.]

And how could Earl *Hugh* now be in years (as Mr. *Dugdale* would have him) when he marryed his Wife, ſuppoſing with Sir *Thomas*, the Marriage to fall *Anno Domini* 1171? For, by this Record Earl *Hugh* would then be but 21 years old, and his Wife about 15. years old. So this Argument of *Probability* is become an Argument of *Improbability* of the Earl's having any former Wife.

This Record came to my hands after I had written my *Second Reply:* And I am very confident, that when ſoever any Record, tending to this Point, concerning Earle *Hugh*, or *Amicia*, ſhall hereafter, at any time, [80]be diſcovered, it will more and more illuſtrate the Truth of what I have written about them.

[Page 80.]

7. Having now laid aſleep for ever The Argument of the Sticklers for the Legitimacy of *Amicia*, drawn from the Erroneous Computation of Earl *Hugh*'s Age; I come now to the Letter of Sir *Thomas Manwaring*, before mentioned, written by

him to a Kinſman both of his and mine, and left with *Throp* the Stationer in *Cheſter*, purpoſely to be divulged, and made known to every Man in Town: wherein he writ- (among other things), That I having appealed to the Judges, Mr. *Dugdale* had moved them in the Caſe: who upon Mature debate, determined, that *Amicia* was no Baſtard, as I was credibly informed by one who ſaw the Letter.

But, (as I ſaid before) How could there be any Mature-debate, or Determination of the Point in Controverſie by our Reverend Judges, whiles as yet the Caſe is not at all agreed upon between us? For, [81] Sir *Thomas* waves the Queſtion in Law, and will not [Page 81.] abide the Teſt; See *pag.* 60, 61. of his Anſwer to my two books.

For whether *Amicia* was a Baſtard, or no? this Queſtion hath nothing of any Law in the caſe, and therefore unfit to be put to our Reverend Judges for their Opinions, unleſs alſo all the Records and Hiſtories touching the ſame, together with the Reaſons alledged on both ſides, were produced before them: It is more proper for them to Judge only upon the point of Law.

And it is granted on all hands, that Lands cannot paſs with Baſtards *in libero maritagio*, at this day, as the Law is now taken: but in the more ancient Ages, when the Deed to *Amicia* was made, Lands might and did uſually paſs with Baſtards *in libero maritagio:* I affirm it out of ancient Precedents; Sir *Thomas* denies it.

Now all Deeds by the rule of Law, are to be Conſtrued and under-[82] ſtood according to the time when they were made; ſo [Page 82.] that there is now no other Caſe of Law to be put, but this, as I put the ſame in my Epiſtle Dedicatory, to all our Reverend and Learned Judges; to wit, —

Whether in the Age of *Glanvil*, Lands lawfully might, and did uſually paſs with Baſtards in Free Marriage, or no?

Again, I am aſſured from very good hands (who have lately enquired of many of our Judges above) that there was no ſuch thing as a mature debate and determination, as Sir *Thomas* mentioneth in his Letter, nor their Opinions at all delivered as

yet in the Caſe of *Amicia*, now in Conteſt; and ſome of them ſaid, that they never had any ſuch a queſtion asked them, as whether in the Age of *Glanvil*, Lands might Lawfully paſs in Free-marriage with Baſtards?

If Mr. *Dugdale* hath moved any of the Judges in private, for
[Page 83.] their Opinions in any point of Law about [83]*Amicia*, had he but given me due notice of ſuch his intention, I would have met him half way, and ſo the Caſe might have been truly ſtated, and the point thorowly debated; for he being on the place, might have thoſe opportunities which I could not at this diſtance poſſibly have, and ſo the truth would have appeared to the world.

And therefore, that I may deal above-board, I have here following, publiſhed by it ſelf, The Caſe of *Amicia* truly Stated, for the better apprehenſion and information of all Perſons; and the rather, for that Mr. *Dugdale* only buildeth his Opinion of the Legitimacy of *Amicia* on the ſame point of Law, in his Baronage of *England*.

And howbeit (as I formerly ſaid) I left every man to his own free judgment, thinking rather to eſtabliſh my own Opinion by Authorities and good reaſon, then by other mens Opinions; ſo I never went about to hunt for Opinions, eſpecially in the Caſe of
[Page 84.] *Amicia*, (for ma-[84]ny did concur with me without my ſeeking) till after that Letter of Sir *Thomas Manwaring* before-mentioned: for I ever counted it an improper thing to prove a point of Hiſtory by a nice point of Law.

But I have lately made ſome enquiry, and am aſſured from very good hands, that ſome of our more eminent Judges above (and I believe all of them, if they would deliver their Opinions in the Caſe) do concur with me in the point of Law aforeſaid; and ſo do alſo other Eminent and Learned Lawyers here below; that in thoſe elder Ages, a gift in Free-marriage, with a Baſtard, was good, although at this day our Law is otherwayes taken.

So that now there is not ſo much as one ſeeming Argument of Reaſon left to uphold the Legitimacy of *Amicia*.

Beſides, one of our moſt eminent Heralds of our Nation, and

King at Armes, is of Opinion with me alſo, that Earl *Hugh* never had any other [85]Wife but *Bertrey*, as I have it from a ſure hand, who was then preſent when he publickly ſpoke it, whoſe judgment *I* may well bottom on; for I am ſure there is no Hiſtory, or Record to prove any other Wife at all, and very many other judicious and knowing men do concur in opinion, that *Amicia* was a Baſtard; and ſo *I* leave it to the judgment of all men, who are vers'd in Antiquities, Records, and Hiſtories. [Page 85.]

And ſo *I* have done, if Sir *Thomas* hath done; and now *I* think it will be time for both to have done.

Mobberley, December *the* 17th.
1675.

F I N I S.

THE

CASE

OF

AMICIA

Truly Stated.

By Sir *Peter Leyceſter*,
Baronet.

Auguſt the 5th. MDCLXXV.

Qui vult decipi, decipiatur.

Printed in the Year, 1676.

89 THE [Page 89.]

CASE

OF

AMICIA

Truly Stated.

THe Queſtion concerning *Amicia*, Wife of *Rafe Manwaring*, and Daughter of *Hugh*, Sir-named *Cyvelioc*, Earl of *Cheſter*, is briefly this —

Whether the ſaid *Amicia* was a Baſtard, or no? This is altogether a queſtion of Hiſtory, and nothing of Law at all in the Caſe.

90 The Reaſons Collected out of Hiſtory, Records, and Evi- [Page 90.]
dences, ſhewing her to be a Baſtard, are theſe —

1. It is confeſſed on all hands, that *Amicia* was no Daughter by *Bertrey*, the Wife of Earl *Hugh*, for then ſhe would have ſhared the Lands of the Earldom, with the other Daughters by *Bertrey*, which for certain ſhe did not, nor ever claimed any part of the ſame, as is moſt manifeſt by the Record of 18. *Hen.* 3. when all the Co-heirs did implead *John* the Scot, then Earl of *Cheſter*, upon a Writ *de rationabili parte:* See my book of Hiſtorical Antiquities, *pag.* 151. as alſo by the teſtimonies of many of our ancient Hiſtorians, who have Recorded all thoſe Daughters in their books.

And ſhe could be no Daughter by any latter Wife, becauſe *Bertrey* ſurvived Earl *Hugh*, her Husband: See my ſaid book of Antiquities, *pag.* 132, & 139, & 143, & 148.

[Page 91.] [91]And ſhe could be no Daughter by any former Wife; becauſe Earl *Hugh* never had any other Wife but *Bertrey?* And the Sticklers for the Legitimacy of *Amicia*, do confeſs that they cannot prove any other Wife at all; much leſs can they prove *Amicia* to be the Daughter of any ſuch Wife: Therefore the Earl having no other Wife but *Bertrey*, and *Amicia* being no Daughter by *Bertrey*, *Amicia*, Daughter of Earl *Hugh*, muſt certainly be a Baſtard.

2. Earl *Hugh* had ſeveral other Baſtards, as is evident by ancient Deeds; and if the bare alledging that he had another Wife be ſufficient without due proof, than all his other Baſtards may be made Legitimate, by ſaying that they were by another Wife: And our ancient Hiſtorians, as *Matthew Paris*, *Poly-Chronicon*, *Knighton*, *Stow*, and others, have Recorded the Lawful [Page 92.] Children of Earl *Hugh;* but not one of them [92]mentioning *Amicia* in the leaſt, nor any former Wife at all, which ſome one or other of them, without doubt would have taken notice of, had *Amicia* been a Legitimate Daughter.

3. *Rafe Manwaring*, the Husband of *Amicia*, was not an equal Competitor at that time, to have Married a Lawful Daughter of the Earl of *Cheſter;* for we find the Lawful Daughters of this Earl *Hugh* were Married to the greateſt Earls then in *England:* The Earl of *Huntington*, who was Brother to the King of *Scotland*, the Earl of *Arundel*, the Earl of *Derby*, and the Earl of *Wincheſter*'s Son and Heir; and therefore it is more than probable, that *Amicia* was not a Lawful Daughter, eſpecially ſince no proviſion conſiderable was made for her, who muſt have been the only Daughter and Heir of Earl *Hugh*, by a firſt Wife, as thoſe [Page 93.] of the contrary opinion would make her; [93]and if ſo, ſhe ought in all Reaſon to have had fully as great an Eſtate provided for her, as any of his Children by a latter Wife, which certainly ſhe never had. Wherefore *res ipſa loquitur;* for nothing appears to

be given unto her, ſave only the releaſe of the Service of one Knights Fee, given with her in Frank-Marriage, which ſure was too ſmall a Portion for a Lawful Daughter of the Earl of *Cheſter*.

And thus much for the Queſtion of Hiſtory, whether Baſtard, or no Baſtard?

Which I ſubmit wholly to the Judgement of all Wiſe and knowing men, who are verſed in Hiſtories, Records, and Antiquities.

And many very wiſe and knowing men, ſome Divines, ſome Lawyers, and other grave and underſtanding Perſons, have herein declared that they concurre in Opinion, that *Amicia* was a Baſtard.

[94]But now ariſeth another Queſtion; for thoſe who would have *Amicia* to be a Lawful Daughter, and no Baſtard (which cannot be ſupported either by Hiſtory, Records, or Reaſon) they would ground their Opinion from a point of Law; to wit, that Lands cannot paſs in Free-Marriage with a Baſtard; and becauſe *Amicia* had a grant of ſome Services in Free-Marriage, from the Earl her Father, therefore they conclude ſhe was no Baſtard: For all other Arguments for her Legitimacy are ſo void of Reaſon and Authority, that all bottoms on this one Argument; and the Queſtion now is this— [Page 94.]

Whether the Deed of *Hugh*, Earl of *Cheſter*, (wherein he granted unto *Rafe Manwaring* in Free-Marriage with *Amicia* his Daughter, the Service of *Gilbert*, Son of *Roger*; to wit, the Service of three Knights-Fees, by doing to the ſaid Earl & his Heirs the Service of two [95]Knights-Fees,) be a ſure Argument to prove *Amicia* a Legitimate Daughter? [Page 95.]

But for the better ſtating of the queſtion, it is granted on both ſides, that Lands cannot now paſs in Free-Marriage with a Baſtard, as the Law is taken at this day. The proper queſtion of Law therefore in the preſent Caſe is this——

Whether by the Law, in *Glanvil*'s time (who was chief Juſtice of *England*, under King *Henry* the Second, and lived in the very Age with *Amicia*, when the ſaid Deed was made) Lands might

and did uſually paſs in thoſe Elder Ages in Free-Marriage, as well with Baſtards as no Baſtards?

The Arguments for the Affirmative part are theſe——

1. From the very words of *Glanvil* himſelf (who was the firſt after the Norman-Conqueſt, who reduced the Model of our Common-Law into writing) in his Treatiſe *de Legibus Angliæ*,
[Page 96.] lib. 7. cap. 1. §6 *Quilibet liber homo quandam partem terræ ſuæ cùm filiâ ſuâ vel cum aliquâ aliâ quâlibet muliere, dare poteſt in maritagium, ſive habuerit hæredem ſive non, velit hæres vel non, imo & eo contradicente:* Alſo *lib.* 7. *cap.* 18. *Liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliquâ muliere alicui in maritagium, ità quod ab omni Servitio terra illa ſit quieta, & à ſe & hæredibus ſuis, verſus capitalem Dominum, acquietanda.*

And *Bracton* expreſly, *lib.* 2. *cap.* 7. *Quoniam terra data Baſtardo in maritagium, ſicut & aliis, vel Baſtardo per ſe, in ſe tacitam habet Conditionem vel expreſſam de reverſione* ... &c. See alſo Sir *Thomas Manwaring*'s Law-Caſes Miſtaken, *pag.* 10, 11.

So that Lands might be given in Free-Marriage to any man, with any woman whomſoever, without any exception; and if
[Page 97.] with any Woman whomſoever, then certainly §7 with a Baſtard; and *Bracton* more expreſly, that Lands might then be given to a Baſtard in Marriage; neither are Baſtards any where diſallowed by the Law, either in *Glanvil* or *Bracton*, for having Lands given in Free-marriage.

2. That the Law was ſo taken in the time of King *John*, and upwards, appeareth by ſundry Precedents of thoſe elder Ages, whereby Lands were given in Free-marriage with Baſtards.

See one in my Book of Antiquities, *pag.* 112. wherein *Randle*, Earl of *Cheſter* (Sir-named *de Gernouns*) gave unto *Geva Ridel*, Daughter of Earl *Hugh* [that was *Hugh Lupus*] *Drayton*, in Free-marriage with the Appurtenances, even as Earl *Hugh* gave the ſame unto her in Free-marriage: This Deed was made about the end of *Hen.* 1. or King *Stephen.*

And that *Geva* was a Baſtard, *Ordericus* an Hiſtorian of good

Credit, and Contemporary with *Geva*, plainly ſhews, for *lib.* 4. [98]*Eccleſiaſticæ Hiſtoriæ*, pag. 522. He tells us that *Hugh Lupus* [Page 98.] had many Baſtard-Sons & Baſtard-Daughters; yet nameth none of them in particular, *è Pellicibus plurimam Sobolem utriuſque ſexûs genuit, quæ diverſis infortunijs abſorpta penè tota periit: Ermentrudem filiam Hugonis de Claromonte Beluacenſi uxorem duxit, ex quâ Ricardum Ceſtrenſis comitatûs hæredem genuit, qui juvenis liberiſque Carens naufragio periit.* So that having given an account of his Wife, and his Son by her, who dyed young, and without Children, he would certainly have given an Account of his other Children by his Wife, if he had had any other by her; but to put it out of all doubt, he tells us afterwards, *lib.* 10. *Eccleſ. Hiſt. pag.* 787. *Ricardus Pulcherrimus puer, quem ſolum ex Ermentrude filiâ Hugonis de Claromonte genuit, Conſulatum (Ceſtriæ Scilicet) tenuit*, ſo that Earl *Hugh* only begot *Richard* on *Ermentrude* his Wife & then by ſure conſequence out of his words, it muſt needs follow that *Geva* [99]was one of the Earl's [Page 99.] Baſtards, ſhe being no Child by *Ermentrude*, his Wife; which is clearly proved without a point of Law, and cannot by any point of Law be taken off.

Again, if *Geva* had been a Lawful Daughter by *Ermentrude*, then ſhe would have been ſole Heir to her Brother *Richard*, and ought to have had the Earldom of *Cheſter*, which ſhe never had, nor ever claimed: See this more fully in my Anſwer to the Defence of *Amicia*, pag. 35. to pag. 40. and if any ſhall run to the old Subterfuge, and ſay, ſhe might be his Daughter by a former Wife, let him prove it, and take it; and ſhe could be no Daughter by a latter Wife, becauſe *Ermentrude* ſurvived Earl *Hugh* her Husband: See my Hiſtorical Antiquities, *pag.* 114.

Other two Precedents we have of Lands, granted in Free-marriage with *Joan*, Baſtard-Daughter of King *John*.

1. One, wherein King *John* granted to *Lewellyn*, Prince of [100]*North-wales*, in Marriage with *Joan* his Daughter, the Caſtel [Page 100.] of *Elleſmere* in *Shropſhire; Tenendum ei, & hæredibus ſuis qui de eo & prædictâ filiâ noſtrâ exierint, de nobis & hæredibus noſtris*

in liberum maritagium; Salvis conventionibus inter nos & ipſum de terrâ & eodem maritagio factis, &c. Dated *Anno Sexto Johannis Regis,* 1204. See the Deed at large in the Advertiſement to the Reader, at the end of my book, ſtiled Sir *Thomas Manwaring*'s Law-Caſes miſtaken, *pag.* 53. tranſcribed from the Record in the Tower of *London.*

2. Another ſee in my book of Antiquities, *pag.* 152. wherein it is Covenanted that *John* the *Scot,* Nephew of *Randle,* Earl of *Cheſter* and *Lincoln* by his eldeſt Siſter, ſhall Marry *Helen,* Daughter of *Lewellyn,* Prince of *North-wales;* and that the ſaid *Lewellyn* ſhall give to the ſaid *John* in Free-Marriage all the Mannor of *Budford* in *Warwick-ſhire,* and the Mannor of *Suttehele* in *Worceſter-ſhire, cum* [101] *omnibus Pertinentiis, ſicut Dominus Johannes Rex ea illi dedit in libero maritagio* ..... &c. This Deed was made about 6. *Hen.* 3. *Anno Chriſti.* 1222. Now that the ſaid *Joan* was a Baſtard-Daughter of King *John,* take theſe ſeveral Authorities, *Vincent* upon *Brook,* pag. 204. *Speeds* Hiſtory, *p.* 518. *Stow*'s Annalls Augmented by *Howes,* pag. 167, 168. *Polychronicon* Tranſlated into *Engliſh* by *Treviſa,* lib. 7. cap. 33. *Cambdens Brittannia* in *Shropſhire,* pag. 453. alſo *Daniel* and *Fabian,* and *Milles* Catalogue of Honour, and Sir *Richard Baker*'s Hiſtory, who do all call her baſe Daughter of King *John;* and no Author at all calls her Lawful Daughter, or reckoneth her among the Daughters by any of his Wives; ſome of them ſay ſhe was begot by King *John* on *Agatha de Ferrars.*

[Page 101.]

And therefore theſe Deeds and Charters which concerned ſo great Perſons (whom we cannot ſuppoſe to be without Learned Councel about them) are clear Precedents, [102] ſhowing how the Law was then taken, and were good Deeds, conveying the Lands with Baſtards in Free-marriage in thoſe Ages, which Lands were quietly enjoyed accordingly, and nothing can be ſaid againſt them: Many other Precedents of like nature in thoſe ancient Ages, might without doubt, upon diligent ſearch and enquiry, be found out.

[Page 102.]

For as much then as it appears by the words of *Glanvil,* that

Lands might then be given with any Woman whomſoever in Free-marriage, and no Baſtards then excepted or diſallowed by the Law, either in *Glanvil* or *Bracton*, and that clear Precedents of thoſe elder Ages do prove and ſhow, that Lands did then uſually paſs in Free-Marriage, as well with Baſtards, as Lawful Daughters; and that all Deeds by the rule of Law, are to be conſtrued and underſtood according to the time when they were made: How can a Deed of Services, given *in libero maritagio* (in the Reign [103]of *Henry* the Second) with one juſtly ſuſpected [Page 103.] to be a Baſtard, be a ſure Argument, or any Argument at all, to prove her Legitimate?

Wherefore it is very evident, that in thoſe elder Ages (as the Law was then taken in the Reign of King *John*, and upwards) Lands lawfully might, & uſually did paſs *in libero maritagio* with Baſtards, as well as with no Baſtards, howbeit at this day our Law will not permit the ſame.

F I N I S.

AN

ADMONITION

To the Reader of

Sir *Peter Leiceſter*'s Books.

Written by Sir *T. M.*

Printed in the Year 1676.

[3]*An Admonition to the Reader of Sir* Peter Leiceſter*'s Books.*

[Page 3.]

Courteous Reader,

THat you may know *Hercules* by his Foot, and not, with ſome few perſons, confidently believe every thing which Sir *Peter Leiceſter* doth write, I here give you an account of the Partiality, Omiſſions, Uncertainties, and Miſtakes of the ſaid Sir *Peter*, in thoſe two Sheets of his *Hiſtorical Antiquities*, in which he writes of the Townſhip of *Over Peover*. And I cannot but wonder that they are ſo numerous, conſidering he always had liberty to peruſe any Deeds or Copies of Records which I had in my cuſtody; and that I alſo was [4]ever willing to give him any other aſſiſtance concerning my Family, which did lie in my power. [Page 4.]

Firſt, in his 330 page, he calls *Ranulphus* (who, as he confeſſeth, in the Conqueror's time held this Townſhip of *Peover*, or the greateſt part thereof) the ſuppoſed Anceſtor of the *Mainwarings*, as he alſo uſually doth in other Townſhips where he hath occaſion to name the ſaid *Randle;* and yet, as you may ſee, *page* 208. he calls *Odard* the undoubted Anceſtor of the *Duttons*. Now what reaſon he can have to call *Odard* the undoubted Anceſtor of the *Duttons*, and *Ranulphus* but the ſuppoſed Anceſtor of the *Mainwarings*, (except his partiality) I cannot imagine: For, firſt, the Sirname of *Mainwaring* was a fixed name, whereas the Sirname of *Dutton* was taken from that place; and if another Family had bought it of the Poſterity of *Odard* within few Generations after

the Conqueſt, they poſſibly might have ſtiled themſelves after that place, that being the manner of thoſe Ages, as Sir *Peter* tells us in his 250 *page;* and accordingly he not onely gives us
[Page 5.] examples there of three Branches [5]of the *Duttons, viz. Warburton, Chedill,* and *Aſhley,* who did all call themſelves after the Places where they lived, but he gives us many other like inſtances in many other places of his ſaid Book. Secondly, Sir *Peter* doth not add the Sirname of *de Dutton* in his ſaid 250 *page,* to the ſaid *Odard,* or *Hugh* Son of the ſaid *Odard,* but onely to *Hugh de Dutton,* Son of *Hugh,* who was the Third of that Family. Whereas the Sirname of *Meſnilwaren* or *Mainwaring,* was uſed, as you may ſee in the 111 *page* of the ſaid Book, in King *William Rufus* his days, by *Richard Meſnilwaren,* which (except the ſaid *Ranulphus*) is the firſt *Mainwaring* that we do find. Thirdly, the principal reaſon (as I conceive) why Sir *Peter* ſays, *Odard* was the undoubted Anceſtor of the *Duttons,* is, becauſe the *Duttons* enjoyed thoſe Lands, which the ſaid *Odard* held in the Conqueror's time, which were, if I miſtake not, part of *Dutton,* which the ſaid *Odard* held of the Earl of *Cheſter;* and *Aſton,* and part of *Weſton,* and part of *Halton,* which the ſaid *Odard* held under *William Fitz-Nigel,* Baron of *Halton.* But as
[Page 6.] the afore-[6]ſaid Lands of the aforeſaid *Odard* were enjoyed by the *Duttons;* ſo the Lands of the ſaid *Ranulphus* in *Blaken, Wenitone, Tatton, Pever, Warford, Little-Pever, Cepmundewiche, Ollerton, Seneleſtune, Cocheſhalle, Hoiloch, Tadetune,* (which is the ſame with *Warmincham*) *Norwardine, Sundreland,* and *Bageley* in *Cheſhire,* and the Lordſhip of *Waburne* in *Norfolk,* (being all the Lands which the ſaid *Ranulphus* held in the Conqueror's time) were certainly enjoyed by the *Mainwarings.* But this I ſay not to take off any thing from the Family of *Duttons,* (for I am fully ſatisfied that *Odard* was their Anceſtor) but to ſhew the Partiality of Sir *Peter,* in doubting of *Ranulphus* more than of the ſaid *Odard.*

2. He tells us in his ſaid 330 *page,* That by antient Deeds there were antiently two Places or Hamlets in *Over-Peover,* one

called *Cepmundewich*, the other *Fodon;* whereas there were Seven ſuch Places there, *viz. Cepmundewich*, *Fodon*, *Hongrill*, *Hethalis*, *Brydenbrugge*, *Twyford*, and *Radbroc.* And it is very ſtrange, how Sir *Peter* could omit the laſt of theſe, ſeeing in the very ſame page he ſpeaks of *Radbrook-houſe* in *Over-Peover*, [7]and mentions [Page 7.] a Deed by which *William Mainwaring*, then Lord of *Over-Peover*, gave *illam terram quæ vocatur* Radbroc *integram*, unto *Thomas Mainwaring* his younger Son.

3. In the Pedigree of the *Mainwarings* (*page* 331) he leaves out *Ranulphus*, who is nominated in *Doomſday-Book*, *Richard de Meſnilwarin*, mentioned in his *Hiſt. Antiq.* (*page* 111.) *Roger de Meſnilgarin*, or *Mainwaring*, and *William* and *Randal* his Sons, ſpoken of by him (*page* 341.) *Roger de Menilgarin*, or *Mainwaring*, named by him (*page* 362.) Sir *Ralph Mainwaring*, and Sir *Roger Mainwaring* his Son, both taken notice of by him, (*page* 330.) and this upon a pretence, that they were Lords of *Warmincham:* Whereas I am confident he will not deny, but that the *Mainwarings* of *Warmincham*, were alſo owners of *Over-Peover*, or the moſt part thereof, until Sir *Roger Mainwaring* gave *Peover* to his younger Son Sir *William Mainwaring;* preſently after which time, the Line of the *Mainwarings* of *Warmincham* failing, the *Mainwarings* of *Peover* became Heirs male to thoſe *Mainwarings* of *Warmincham*, Sir *Warine* [8]*Mainwaring*, Son of Sir [Page 8.] *Thomas Mainwaring*, Son of the ſaid Sir *Roger*, dying without Iſſue Male. And though he may pretend, that he did not mention thoſe *Mainwarings* of *Warmincham*, who alſo were owners of *Peover*, becauſe they (as he ſuppoſeth) then lived at *Warmincham*, in another Hundred; yet in his ſaid Book he gives an account of the Deſcents of ſome, who had Eſtates in *Bucklow* Hundred, though he then looks upon them as living in other Hundreds.

4. He tells us (*page* 332) that *Margery Praers*, one of the Coheirs of *William Praers* of *Baddeley*, (and Siſter to *Joan* the other Coheir, who was Wife to *William Mainwaring*) married *John Honford* of *Honford*, and afterwards that ſhe married *Hugh*

Holt, 33 *Edw.* 3. but had no Iſſue by *Holt*, and that ſhe had Iſſue by *John Honford* a Son named *John Honford*, who was a Baſtard: But he is miſtaken in ſaying that *Holt* was her ſecond Husband; for *Margery* had her Baſtard *John Honford*, before ſhe had any Husband, and ſhe was Wife to *Hugh Holt*, 33 *Edw.* 3. and ſhe was Wife to *John Honford* 46, 47, and 50 of *Edw.* 3.

5. In the 332 *page*, he takes no notice, that *William Leigh* of
[Page 9.] *Baggeleigh*, who [9]married *Joan*, the Daughter of *William Mainwaring* of *Peover*, in the 33 of *Edw.* 3. was a Knight; and yet, as you may ſee in his 217 *page*, he knew the ſaid *William* to be a Knight.

6. He ſays in his ſaid 332 *page*, That *William Mainwaring* the Elder, who lived 33 *Edw.* 3. ſealed with *three Bars*, with a *Lion paſſant in Chief;* whereas the Coat of Arms was *Argent, two Bars Gules, on a Chief of the Second, a Lion paſſant, gardant Or;* and ſo it is cut in his own Book, *page* 331.

7. He takes notice (*page* 332.) that *William*, younger Son of *William*, Son of *William Mainwaring*, had a Daughter named *Ellen*, who was married to *Adam Glaſebroke:* But he omits *John* and *Margery*, Brother and Siſter to the ſaid *Ellen*.

8. He ſays (*page* 332.) that *William* Son of *Roger Mainwaring* died about 12 or 13 of *Edw.* 3. whereas I find him Party to a Deed made on the Eve of S. *John Baptiſt*, 14 *Edw.* 3. and how long he lived after, I believe no man can tell.

9. He ſays (*page* 332.) that *William Mainwaring*, Son of *William Mainwaring* and *Joan Praers*, did divide the Lands
[Page 10.] of *Baddeley* between *John Mainwaring* [10]his Half-brother, and *John Honford;* whereas he gave ſeveral thouſand Acres of Land, which came by his Mother, and of the which the Demeſn of *Baddeley* was part, ſolely to his ſaid Brother *John*, and onely divided the remainder of the ſaid Lands; and the Will which directs that Diviſion, doth alſo direct the diſpoſal of the other Lands.

10. He takes notice (*page* 333.) that *William Mainwaring*'s Seal, 17 *Rich.* 2. had the Impreſſion of his Coat and Creſt, to

wit, in an *Eſcocheon, two Bars* onely; and corner-ways, on the Dexter Angle, on an Helmet, an *Aſs-head cooped*, &c. which (he ſays) his Heirs have ever ſince continued, to wit, *Argent two Bars Gules;* the Creſt, *An Aſs-head cooped, proper:* And tells you, that the ſaid *William* died 1399, 22 *Rich.* 2. Whereas all the *Mainwarings* that I can find, who have lived ſince the ſaid *William*, have either given the *Aſs-head on a Torce and Halter*'d, or elſe the *Aſs-head Eraſed*, or elſe the *Aſs-head unhalter'd, and within a Crown.*

11. He ſays (*page* 333.) that *William Mainwaring* (the Husband of *Katherine Belgrave* and *Clementia Cotton*) ſetled his [11] Eſtate, upon his departure out of *England* towards *Guien*, [Page 11.] 17 *R.* 2. 1393. and afterwards made his Will, 1394. Whereas the ſaid ſettlement made 17 *R.* 2. was alſo a Will, and was but of part of the Eſtate which he had by his Mother; and beſides that and the other Will, dated 1394. he made a third Will, 1399, by which laſt Will he gave directions to his Feoffees how to diſpoſe of all his Mothers Lands; but he diſpoſed not of thoſe Lands he had as Heir to his Father, by any of the ſaid Wills.

12. He ſays (*page* 333.) that *John Mainwaring* of *Over-Peover* married *Margaret*, the Widow of Sir *John Warren* of *Poynton* in *Cheſhire*, and Daughter and Heir of Sir *John Stafford* of *Wigham*, about 13 *Rich.* 2. For Sir *John Warren* died the Tenth of *Rich.* 2. But how Sir *John Warren*'s dying in the Tenth of *Rich.* 2. doth prove, that the ſaid *John Mainwaring* married his Widow, about the Thirteenth of *Rich.* 2. I confeſs I do not underſtand.

13. He ſays (*page* 333.) that *John Mainwaring* was made Sheriff of *Cheſhire*, 4. *Hen.* 4. and continued Sheriff 5 *H.* 4. and 6 *H.* 4. but he omits his being Sheriff 7 *H.* 4.

[12] 14. He ſays (*page* 333.) that *John Mainwaring* died 11 *H.* 4. [Page 12.] 1410. whereas he was certainly dead in the year 1409.

15. He ſays (*page* 334.) that *Margery* ſurvived her Husband *Randle Mainwaring*, and erected a Stone-Chappel on the South-ſide of *Over-Peover* Church, with the two Monuments therein for

her ſelf and her Husband, 1456. Whereas the ſaid *Margery* was certainly dead in the year 1449. and died ſeveral years before her ſaid Husband, as you may ſee in the 75, 76, 77, and 78 pages of my *Defence of Amicia*, printed in the year 1673.

16. He ſays (*page* 334.) that Sir *John Mainwaring* of *Over-Peover* died about the very end of *Edw.* 4. Reign; but the ſaid King *Edward* died in the Twenty-third year of his Reign, and the ſaid Sir *John Mainwaring* was certainly dead on the 14 day of *April*, in the Twentieth year of the ſaid Kings Reign, as appears by a Precept to the *Eſcheator* of *Cheſhire*, bearing the ſaid date.

17. He omits in the 335 *page*, *Agnes* the Daughter of *John*
[Page 13.] *Mainwaring* of *Peover*, Eſq; and Wife of Sir *Robert* [13]*Nedham* Knight; and this, although he had been informed of a two-fold undoubted proof thereof, as you may ſee in the 79 and 80 pages of my *Defence of Amicia*, before mentioned.

18. He poſitively ſays (*page* 335) that *Katherine* the Daughter of Sir *John Mainwaring*, was married to *William*, Son of *Humphrey Newton* of *Pownall*, 13 *H.* 8. 1521. But the Deeds concerning thoſe Lands which ſhe was to have in Joynture (at which time ſhe was certainly unmarried) were dated the firſt and ſecond of *March*, in 13 *H.* 8. which was in the year 1521. according to the account of the Church of *England*, but in the year 1522. according to the *Julian* account. Now the Dominical Letter being that year *E.* and the Golden Number 3. the ſecond of *March* would be *Shrove-Sunday*, and *Eaſter-day* on the twentieth of *April;* and *Lent* being a time not uſual for Marriage, and eſpecially in the time of King *Henry* the Eighth, in all probability the Marriage was not till after *Eaſter;* and if ſo, it was not until the year 1522. However there is no certainty of what Sir *Peter* there ſays.

[Page 14.] [14]19. He alſo (in the 335 *page*) tells us, how Sir *John Mainwaring* was Sheriff of *Flintſhire*. 6 *H.* 8. 1514. but takes no notice of his being Sheriff there in the 23 and 24 years of King *Hen.* 7.

and 1 *Hen.* 8. and 2 *Hen.* 8. and probably ever from then till the end of 6 *Hen.* 8.

20. He ſays (*page* 335.) that Sir *John Mainwaring* died 8 *H.* 8. 1515. Whereas no part of the eighth year of King *Hen.* 8. was in 1515. neither did Sir *John* die in the eighth year of the ſaid King.

21. He ſays (*page* 335.) that Sir *Randle Mainwaring*, after the death of his firſt Wife, married *Elizabeth*, the Daughter of Sir *Ralph Leiceſter* of *Toft*, 6 *Edw.* 6. 1551. but he cannot prove that they were married until the year 1552.

22. He ſays (*page* 336.) that *Philip Mainwaring* of *Over-Peover*, Eſq. fifth Son of Sir *John Mainwaring*, and Brother and next Heir-male to Sir *Randle*, married *Anne*, Daughter of Sir *Raufe Leiceſter* of *Toft;* and tells us from his Monument the time of the ſaid *Philip*'s death. But though the reſt of them died young, yet *Philip* was born the ſeventh, and not the fifth Son of the ſaid Sir *John*, [15]as appears by the Monument of the ſaid Sir *John*, which is in the ſame Chappel that the Monument of the ſaid *Philip* is in. [Page 15.]

23. He ſays (in the ſame page) that the Herald in the Reign of Queen *Elizabeth*, made for the Coat of the ſaid Sir *Randle* the elder, *Barry of twelve pieces, Argent and Gules.* But the Coat which the ſaid Sir *Randle* did then uſually bear, was, *Argent ſix Barulets Gules*, which the ſaid Sir *Randle* did give, becauſe the moſt antient of the Deeds of the *Mainwarings* were ſealed with *ſix Barulets;* but the *Mainwarings* ſince then have again given *two Bars* onely, according to what they had done of a long time before, the *two Bars* having been alſo uſed to Deeds without date: Alſo in the 330 page, you may read, that Sir *Peter* knew the antient Coat to be *ſix Barulets*, and not to be *Barry of twelve pieces Argent and Gules.*

24. He alſo ſays (in that ſame page) that Sir *Randle Mainwaring* the elder, built the Hall of *Over-Peover* a new, 1586. the Fabrick being now of Brick; but one part of the ſaid Houſe was built 1585. and another part was built 1586.

[Page 16.] 1625. He ſays (*page* 336.) that Sir *Philip Mainwaring*, youngeſt Son of Sir *Randle Mainwaring* the elder, of *Peover*, Knight, was Secretary of *Ireland* to the Earl of *Strafford*, 1638. Whereas the ſaid Sir *Philip* was his Majeſty's Secretary of State there.

26. He ſays (*page* 336.) that Sir *Philip Mainwaring* died, 2° *die Auguſti*, 1661. at *London;* But he died at *Weſtminſter*, at Sir *Philip Warwick*'s Houſe, which is in or near to St. *James*'s Park.

27. He alſo ſays (in the ſame page) that *Anne*, third Daughter of Sir *Randle Mainwaring*, of *Peover*, the younger, (which *Anne* was Couſin-Germain to the ſaid Sir *Peter*) married *Robert Brierwood* of *Cheſter*, Counſellor at Law, after, Sir *Robert Brierwood*, Knighted 1643. and Judge of three Shires in *Wales:* But he takes no notice that he was made Sergeant at Law 1640. nor that he was made one of the Judges of the *Kings Bench*, 1643. Indeed amongſt the Recorders of *Cheſter* (*page* 187.) he tells us, that the ſaid Sir *Robert* was made Judge of the *Common-Pleas*, and Knighted at *Oxford* 1643. But the ſaid Sir *Robert* was never
[Page 17.] any Judge of the Court of *Com-*[17]*mon-Pleas*, but the King did conſtitute him, *unum Juſticiariorum ad placita coram Rege*, in the year 1643. that is, he then made him one of the Judges of the *King's Bench*, or *Upper Bench:* But it ſeems Sir *Peter* did not know the meaning of the aforeſaid words. He alſo (in the 334 *page*) ſays, That Sir *John Nedham*, who married *Margaret*, the Daughter of *Randle Mainwaring*, was *Juſticiarius de Banco*, and Judge of *Cheſter*, 1 *Edw.* 4. that is, he was then one of the Judges of the Court of *Common-Pleas*, and Judge of *Cheſter;* for he was *Juſticiarius de Banco*, in the year 1457. 35 *Hen.* 6. and he was Judge of *Cheſter* 1 *Edw.* 4. But as Sir *Peter* did miſtake *Juſticiarius ad placita coram Rege*, to be a Judge of the *Common-Pleas;* ſo I ſuppoſe he did there erroneouſly take *Juſticiarius de Banco* to be a Judge of the *King's Bench*, or elſe I believe he would have told us, that the ſaid *John Needham* was afterwards made a Judge of the *King's Bench;* for he had a Patent to be one of the *Judges* of that Court 1472. 11 *Edw.* 4. as you may ſee in the *Chronica*

Series, at the end of Mr. *Dugdale*'s *Origines Juridiciales*, printed in the year 1666.

18 28. He ſays (*page* 336.) That *Philip Mainwaring* Eſq; Son and Heir of Sir *Randle* the younger, married *Ellen*, Daughter of *Edward Mynſhul* of *Stoke*, Eſq; 20 *Jac.* 1622. But the ſaid *Philip* and *Ellen* were married 1617. and their eldeſt Son *Randle* was born the 25 of *July*, 1619. and their ſecond Son *Philip* was born the 25 of *May*, 1621. [Page 18.]

29. He ſays (*page* 337.) that Mrs. *Ellen Mainwaring* built a ſtately Stable and Dove-houſe at *Peover*, in the year 1654. But the ſaid Stable was built in the year 1653. and finiſhed within 1654. and the ſaid Dove-houſe was not built till the year 1656.

30. He ſays (*page* 336.) That *Margaret* Daughter of Sir *Randle Mainwairing* the younger, and Wife of *Henry Birkenhead*, died at *Cheſter* 25 *July* 1661. but ſhe died on *Saturday* the 20 of *July* 1661. and was buried at *Backford* on *Tueſday* the 23 day of the ſaid moneth.

I alſo think good (having this opportunity) to remind the Reader, how in the 63 page of my Anſwer to Sir *Peter*'s two Books, I did declare, That ſince it did appear, that he was reſolved to have 19 the laſt word, although he had nothing new to ſay, that if what he did after that time write, did prove no more to the purpoſe, than what he had ſaid in his ſaid two Books, that I would not appear in Print againſt him any more, but would chuſe to vindicate my Grandmother and my ſelf by word of mouth, whenſoever I ſhould have an opportunity ſo to do. And for this reaſon, when Sir *Peter* did, within a few days after, print his *Advertiſement* to the Reader, becauſe it did contain little, but a miſtake of his, of a Record concerning *Lhewellin* Prince of *North-Wales*, I did thereupon forbear to publiſh that Anſwer which I did write to the ſame. Since that time Sir *Peter* hath put out at once no leſs than three Books concerning the ſame Subject, *viz.* His Second *Reply*, his *Peroratio ad Lectorem*, and a *Third*, which he calls, *The Caſe of Amicia truly ſtated;* which [Page 19.]

certainly was a great deal of loſt labour, if his former Books had made the Caſe ſo clear, as he all along hath pretended they did.

In all thoſe Books which Sir *Peter* hath written upon this occaſion, the [20]ſame things are ſaid over and over again, ſo very often, as I believe the like will not be found elſewhere; ſo that it would be pleaſant, if ſome perſon, who hath little elſe to do, would take an account how many times he hath repeated the ſame things. Since he did declare in his firſt *Reply*, that he had taken his leave for ever of this Controverſie; he hath printed no leſs than ſeven ſeveral things, and four of them ſince I did appear publickly againſt him; and in the end of his *Peroratio ad Lectorem*, he ſays he hath done, if I have done, which is as much as to ſay, That ſo long as I print any thing concerning *Amicia*, he will never have done: For this cauſe, though I intend ſpeedily to write an Anſwer to that part of the Record, which is mentioned in the 76 page, and the firſt part of the 77 page in his ſaid *Peroratio*, yet I do not deſign it at preſent for the publick Preſs; however, I ſhall willingly ſhew both it, and my Anſwer to his *Advertiſement* to the Reader, to all knowing perſons, who ſhall come to me, and deſire to ſee the ſame; and I do not doubt but to give them full ſatisfaction [21]of Sir *Peter*'s miſtakes, concerning both thoſe Records, and that they do not prove thoſe things which he doth conceit they do.

[Page 20.] [Page 21.]

As for that Letter of mine, which Sir *Peter* doth ſpeak of in the 63, 80, 82, and 84 pages in his *Peroratio ad Lectorem*, it is poſſible I might write to a Kinſman of his and mine, to acquaint him how Mr. *Dugdale* had delivered his Opinion in Print on my ſide; as alſo what I had received from a very good hand, concerning ſeveral of our Judges; but I know nothing at all of my Letter being left with Mr. *Throp*, the Stationer in *Cheſter*, to be divulged and made known to every man in Town. And I am ſure I did not write, that Mr. *Dugdale* had moved the Judges in the caſe; for Mr. *Dugdale* was not in *London* when that Meeting

was, neither did he or I know of it, till that Meeting was paſt, and it was occaſion'd by Sir *Peter*'s Appeal to them: But though he once thought the Judges of this Land fit perſons to determine this Controverſie, yet he now ſays in the 81 page in his *Peroratio ad Lectorem*, That this *Queſtion* [22]*hath nothing of any Law in the* [Page 22.] *caſe, and therefore* unfit *to be put to our* Reverend Judges *for their Opinions, unleſs all the Records and Hiſtories touching the ſame, together with the Reaſons alledged on both ſides, were produced before them: It is more proper for them to judge onely upon the point of Law.* Now how they can judge upon the point of Law, if there be nothing of any Law in the caſe, may be perhaps very difficult for any but Sir *Peter* to tell.

He alſo in the 66 and 67 pages of his ſaid Book, ſays, That Mr. *Dugdale*, ſome years ago, did draw up my Pedigree, wherein he put *Amicia* without the diſtinction of a Baſtard, and is therefore the more concern'd to ſtickle for me, in this conteſt: But though he deal not well with me, in charging me unjuſtly with many things in his former, and alſo in theſe his laſt Books, (which thoſe that are Learned will eaſily diſcover) yet Mr. *Dugdale* is a perſon of that knowledge and integrity, that I believe he cannot perſwade any one man, that Mr. *Dugdale* doth ſtickle for me herein upon that account. And Sir *Peter* himſelf very [23]well [Page 23.] knows, that long before that Pedigree of mine was drawn, Mr. *Dugdale* was of the ſame judgment concerning *Amicia*, of which he is now.

I do alſo expect, that Sir *Peter* will write ſeveral Books againſt what I have here publiſhed, about his Miſtakes concerning my Family; which if he do, I ſhall not go about publickly to anſwer any of them, becauſe I know I ſhould then undertake a work which would never have an end: But if any one will come to me, I will ſhew proof of all the Uncertainties, Omiſſions, and Miſtakes, which I have charged Sir *Peter* withall, and they are not any of them to be imputed to the Printers negligence; for Sir *Peter* rectifies ſome Omiſſions and Errors in his *Hiſtorical*

Antiquities, at the end of his *Anſwer* to my *Defence of Amicia*, and tells the Reader, That thoſe *Amendments will ſet him ſtreight, together with the Correction of the Errata's of Printing, committed by the great negligence of the Printer, which are now mentioned and rectified by a diſtinct page, at the end of the ſaid Book.* And
[Page 24.] there are none of thoſe which I charge him with, [24]mentioned in either of the ſaid places, except that about the Chappel at *Peover*, which the ſaid *Margery*, the Wife of *Randle Mainwaring*, did erect; and that about *Agnes Mainwaring*, Wife of Sir *Robert Nedham;* both which he did not rectifie, until I told him of thoſe Errors, in the latter end of the firſt Book, which I did write.

Baddeley, Auguſt 4. 1676.

T. M.

F I N I S.

AN ANSWER TO Sir *Thomas Manwaring*'s BOOK, Intituled,——

An Admonition to the READER of Sir *Peter Leiceſter*'s Books.

WRITTEN
By the ſame Sir *Peter Leiceſter.*

Printed in the Year, 1677.

[1]*An Anſwer to Sir* Thomas Manwarings *Book*, &c.

[Page 1.]

IN the firſt place, I deſire the learned and ingenious Reader to take notice of the very firſt words of Sir *Thomas Manwaring*'s Admonition — [That you may know *Hercules* by his Foot:] whereby he would inſinuate the blaſting of my Credit and Reputation, even before he begins one word of his Book; and it is all one, as if he ſhould have ſaid in downright words, take heed of believing any thing which Sir *Peter* writes: For here I will ſhew you the Partiality, Omiſſions, Uncertainties, and Miſtakes of the ſaid Sir *Peter*, in thoſe two Sheets of his Hiſtorical Antiquities, in which he writes of [2]the Townſhip of [Page 2.] *Over-Peever*, which are ſo numerous, that little credit is to be given to any thing he writes elſewhere; for *ex pede Hercules*, and it is no matter what he writes of the Baſtardy of *Amicia*, or any thing elſe: See here the ſcope of his deſign.

Had he given me notice of my Miſtakes in private, it would have ſhewed more handſomly in him, and more acceptable to me; but he now publiſheth to the World his own Malignancy, which will be a greater diſhonour to himſelf than theſe pitiful exceptions can be a diſparagement to me, for my Reputation is out of his reach, *Cum tamen non mordeat, oblatrat.*

But let us now take a view of theſe his pitiful exceptions which he would ſo unhandſomly charge upon me as Errours.

To the 1. *Pag.* 4.

Here he ſaith that in *Pag.* 330 of my Book, I call *Ranulphus*
[Page 3.] in *Doomſ-*[3]*day-Book* the ſuppoſed Anceſtor of the *Manwarings:* But *pag.* 208. I call *Odard* the undoubted Anceſtor of the *Duttons:* Now what reaſon I can have for that, except my Partiality, he cannot imagine.

My Anſwer.

Yes, Reaſon enough for it, though he cannot or will not imagine it:

For I have ſeen ſundry Deeds of the firſt Age after the *Norman-Conqueſt*, namely made in the time of King *Henry* the firſt, wherein I find *Hugh* the Son of *Odard* ſo ſtiled, and *Hugh* Son of *Hugh* Son of *Odard:* See *Pag.* 264. of my Book, and *Pag.* 117. *ſub Anno* 1119. and alſo *Pag.* 250. whereas I ſhould be glad to ſee any one Deed of that Age, mentioning or calling *Richard Meſnilwarin* Son of *Ranulphus.*

Again, the ancient Roll of the Barons of *Halton* which I have ſeen and tranſcribed in one of my Manuſcripts, noted *Lib. Cap.*
[Page 4.] *fol.* 84, 85. (which Roll ſeemed to be written [4]in a Character of 300 Years ſtanding at the leaſt,) ſaith thus — *Ab ipſo* Hudardo *venerunt omnes* Duttonienſes. See alſo *Monaſticon Anglicanum*, Vol. 2. pag. 187. and alſo *pag.* 249. of my Book, but I never knew nor heard of any ſuch ancient Roll or Record, wherein it is ſaid — *Ab ipſo* Ranulpho *venerunt omnes* Manwaringi.

Again, I have ſeen the ancient Sword, called at this day *Hudards-Sword*, and is yet in the poſſeſſion of the Heirs of *Dutton* of *Dutton*, and for many Ages hath been paſſed as an Heir-Loom from Heir to Heir for many Generations; and I have ſeen ſome Wills of the *Duttons*, giving the ſame as an Heir-Loom to the Heir by that name of *Hudards-Sword*, which by tradition received hath been conſtantly preſerved by the Heirs of that Family with great veneration, the like (I believe)

cannot be ſhown by any Family of this County, or ſcarcely in *England.* See in my Book, *pag.* 250. I ſay not this to extenuate any Family, but [5]to ſhew the Antiquity of this Family which [Page 5.] hath been ſeated at *Dutton* even from the Conqueror's time to this preſent, and continued in the name of the *Duttons*, until in our days it devolved by a Daughter and Heir unto the Lord *Gerard* of *Gerards-Bromley* in *Stafford-ſhire.*

And therefore I might well call *Odard* the undoubted Anceſtor of the *Duttons*, and by much ſurer proof than (I believe) can be produced to prove the *Manwarings* to be deſcended from *Ranulphus* aforeſaid.

Neither do I look upon the Lands coming to either of the Families to be ne're ſo ſure a proof as what I have mentioned above; for poſſibly Lands might deſcend by a Daughter and Heir, or by Purchaſe, and yet *Richard Manwaring* might not be Son of *Ranulphus*, as is certainly recorded of the *Duttons* from *Odard.*

Howbeit, I am ſo much ſatisfied with the Lands found in Poſſeſſion of the *Manwarings*, in the very next Ages after *William* the Conqueror, that I ſuppoſe the ſame [6]*Ranulphus* to be the [Page 6.] Anceſtor of the *Manwarings*, but I cannot ſay it is ſo certain as the other:

What reaſon now hath Sir *Thomas* to charge me with Partiality in the Caſe?

To the 2. *Pag.* 6.

Here he ſaith, that in the ſame 330 *Pag.* I tell him of two Places or Hamlets in *Over-Peever* anciently called *Cepmunde-wich*, the other *Fodon*, whereas there were ſeven ſuch places there, which he reckoneth up.

Anſwer.

But Sir *Thomas* miſtakes himſelf therein, for neither *Radbroke*,

nor the other four there mentioned by him, were called Hamlets, as *Cepmundewich* and *Fodon* were: See *Pag.* 331. of my Book, for although there might be ſome parcels of Land in *Over-Peever*,
[Page 7.] ſo called, either Fields or Tenements, yet were [7]thoſe parcels never called Hamlets in any Deed that I ever ſaw as yet: Now Hamlets are as it were a Ville within a Ville, and are places more conſpicuous, and uſually containing a greater quantity of Land than a private Place, Field, or Tenement, gaining certain names as thoſe did, and other Places alſo might do; nor was it fit for me to take notice of all ſuch inconſpicuous places in my Book, though I did take notice of the Hamlets; for that were to make my work endleſs, and to ſtuff it with trifles: But I did take notice of *Radbroke*, becauſe it was a Freehold at this day, and now not belonging to *Manwaring*, which made me the rather to mention the ſame; and though it be *locus cognitus* in *Over-Peever* at this day, yet no Hamlet at all.

To the 3. *Pag.* 7.

Here he tells us, that I have left out in the Pedegree of the
[Page 8.] *Manwarings*, (Pag. 331.) *Ranulphus* men-[8]tioned in *Doomſday-Book*, *Richard Meſnilwarin*, *Roger de Meſnilgarin*, or *Mainwaring*, and *William* and *Randle* his Sons, *Roger de Menilgarin* or *Mainwaring*, Sir *Ralph Manwaring*, Sir *Roger Manwaring* his Son.

Anſwer.

But if he had viewed well *Pag.* 330. of my Book, he might have found the laſt *Roger Manwaring*, and *Ralph Manwaring* his Father ſometime Judg of *Cheſter*, to have been mentioned there, but that either of them were Knights, it doth not certainly appear to me, as in my leſſer Book I have formerly given my reaſons; and for the deſcents here mentioned before, *Ralph Manwaring*, I think he himſelf will have much ado to put them

into right order as they ought to be; I am ſure I cannot; and though they were Lords of *Over-Peever*, or the greateſt part thereof, yet certainly none of them lived at *Over-Peever*, till *William* [9]*Manwaring* had *Over-Peever* given him by *Roger* [Page 9.] *Manwaring* of *Warmincham* his Father in the raign of *Henry* the third, and ſo ſeated himſelf here in *Bucklow-Hundred*, where his Heirs have ever ſince continued to this day.

However, my deſign was only to ſhow who held every particular Town in *Bucklow-Hundred* from the time of *William* the Conqueror to this day, or ſo far forth as I could diſcover, together with the Pedegrees of the better ſort of Families ſeated within that *Hundred*, or ſo many of them as my leaſure would permit me to go through, the other *Hundreds* being out of my intended task; and this he takes notice of himſelf, *Pag.* 8. ſo that having ſhewed how the *Manwarings* of *Peever* firſt branched out from the *Manwarings* of *Warmincham*, it was only ſuitable to my deſign to bring down that deſcent to this day. The like I have done of the *Savages* of *Clifton*, and of the *Brookes* of *Norton*.

[10]Yet I cannot but take notice how he calls the firſt *William* [Page 10.] *Manwaring* of *Over-Peever*, and the firſt of the *Manwarings* who ſeated himſelf there, by the title of Sir *William Manwaring*; whereas it is moſt certain that he was no Knight, nor can any Deed be produced wherein he was ever ſubſcribed as a Witneſs, with the word *Domino* prefixed, as Domino *Guillielmo Manwaring* de *Peever*, if Sir *Thomas* would but ſurvey his own Deeds with an impartial eye:

For if he finds any *William* ſubſcribed Domino *Guillielmo Manwaring* in that Age, it is to be underſtood of Sir *William Manwaring* Parſon of *Wernith*, who was contemporary with the other *William Manwaring* of *Peever*, and ſuch Deed or Deeds I my ſelf have ſeen: See *Pag.* 330. of my Book, and my Anſwer to the defence of *Amicia Pag.* 7, 8. alſo my firſt Reply, *Pag.* 73. and my Addenda, *Pag.* 16, 17.

But the firſt Knight of the Family of the *Manwarings* of

[Page 11.] *Over-Peever*, [11]was Sir *John Manwaring* of *Peever*, living in the time of King *Henry* the ſixth, and died about 20. *Edw.* 4.

So that hitherto I have committed no errour at all in theſe things he chargeth upon me.

To the 4. *Pag.* 8.

In this I confeſs I may be miſtaken, in ſaying that *Holt* was the ſecond Husband of *Margery Praers*, ſince he finds *John Honford* was her Husband 46, 47. and 50. *Edw.* 3. for then *Honford* muſt needs be her ſecond Husband, and *Holt* the firſt, which by long pawſing on his own Deeds, he might the better diſcover.

To the 5. *Pag.* 8, 9.

William Leigh of *Baggiley* was no Knight 33. *Edw.* 3. when he married *Joan Manwaring*, for he was then very young and under age, and therefore no errour in what I there have ſaid:
[Page 12.] Howbeit he was afterwards a Knight, [12]which I did take notice of in his due place.

To the 6. *Pag.* 9.

He that tricked out the Seal for me, ſaw as well as my ſelf, that the Seal was three Bars, and not two Bars, to the beſt of our Judgments; but *William Manwaring* the younger, did in his Seal uſe only two Bars 17. *Richard* 2. when the Heirs Males of the *Manwarings* of *Warmincham* failed, and alſo left out the Lyon in chief, as I have there truly obſerved.

To the 7. *Pag.* 9.

I muſt needs omit *John* and *Margery* Brother and Siſter to the ſaid *Helen*, which I then knew nothing of, and poſſibly other things may be hereafter diſcovered, which ought not to be im-

puted as an errour to me when I writ my Book, but ſo far as I writ, was true.

[13]Beſides, It was not my deſign to collect all the Children of the younger Sons: Now theſe were the Children of a younger Son. It was only my task to collect the Wives and Children of the right Heirs of each Family in *Bucklow-Hundred.* [Page 13.]

To the 8. *Pag.* 9.

He ſaith here, that he finds *William* (Son of *Roger Manwaring*) living 14. of *Edw.* 3. and how long after, he believes no Man can certainly tell.

Now I ſaid he died about 12, or 13. of *Edw.* 3. which expreſſion of mine ſhews only a gueſs, without an exact certainty; a very poor exception to be put in Print.

To the 9. *Pag.* 9, 10.

Here he ſaith, that I ſaid *William Manwaring* the younger divided the Lands of *Baddiley* between *John Manwaring* his Half-Brother, and [14]*John de Honford;* but (ſaith he) *William* gave the Demain of *Baddiley* ſolely to his Half-Brother, and divided the remainder of the Lands of *Baddiley:* [Page 14.]

Why then he divided the Lands of *Baddiley.*

To the 10. *Pag.* 10.

Here he ſaith, that all the *Manwarings* that he can find, have either given for their Creſt an *Aſſ-head* on a *Torce,* and haltered, or elſe an *Aſſ-head* eraſed, or elſe an *Aſſ-head* unhaltered, and within a *Coronet.*

Anſwer.

So that he makes here no certain Creſt at all to his Family: A very worthy exception: But they have given the *Aſſ-head*

ſomeway, and it is certain, that *William Manwaring* the younger in his Seal, 17. of *Rich.* 2. did then give the *Aſſ-head* couped, which his Heirs have, or ſhould have continued.

[Page 15.] [15] *To the* 11. *Pag.* 11.

Here he ſaith, that the ſaid *William Manwaring* did not by any Will diſpoſe, but of a part of his Eſtate, namely of the Lands which came by his Mother, nor did he by any Will ſettle the Lands which he had as Heir to his Father.

Anſwer.

Indeed I neither ſaid he ſetled the Lands of the one nor the other, but only that he ſetled his Eſtate, which if it were either of his Mothers Lands, or Fathers Lands, I have ſaid truth; nor is it any matter whether of the one or of the other, to my purpoſe.

To the 12. *Pag.* 11.

Here he ſaith, that he cannot underſtand how the dying of Sir *John Warren* 10. of *Rich.* 2. doth prove that *John Manwaring* [Page 16.] married [16]his Widow about 13. of *Richard* the ſecond.

Anſwer.

But it is probable to be about that time, for it may well be imagined, that it muſt be ſome competent time after Sir *John Warren*'s death, nor can any Man expect punctual proof of every thing in theſe caſes; and if Sir *Thomas* cannot mend it, it may ſtand, till better proof appear.

To the 13. *Pag.* 11.

Here he ſaith, that I have obſerved that the ſaid *John Man-*

waring was Sheriff of *Cheſſ-ſhire* 4, 5, and 6, of *Henry* 4. but have omitted 7, of *Henry* 4.

Anſwer.

Certainly, this is a childiſh exception, as moſt of the other be: Is it poſſible that any Man that ever [17]did write, or ſhall write hereafter of matters of this kind, ſhould comprehend every particular? and this is not worthy the labour of mending, and is well enough without it. [Page 17.]

To the 14. *Pag.* 12.

Here he ſaith, that *Pag.* 333. I ſay *John Manwaring* died 11. of *Henry* 4. 1410. whereas he was certainly dead in the Year 1409. This is alſo a pitiful exception: why doth he not now produce authority for the exact time of his death?

To the 15. *Pag.* 12.

Here he ſaith, that *Pag.* 334. I ſaid *Margery* ſurvived her Husband *Randle Manwaring*, whereas ſhe was certainly dead in the Year 1449, and died ſeveral Years before her Husband.

[18]*Anſwer.* [Page 18.]

But this miſtake I rectified in Print long ſince, at the end of my ſaid Book, among the Errata, and alſo at the end of my Anſwer to the defence of *Amicia*, ſo ſoon as I knew the certainty of it, and therefore ought not to be charged upon me.

To the 16. *Pag.* 12.

Here he ſaith, that I ſaid Sir *John Manwaring* died about the very end of *Edw.* 4. his Raign, but he was dead for certain the 14. of *April.* 20. of *Edw.* 4.

Anſwer.

Had I but ſaid towards the latter end of *Edw.* 4. I had not much erred, and I could not put down the exact time till I knew it: Now *Edw.* 4. raigned but 22 Years in all.

[Page 19.] [19] *To the* 17. *Pag.* 12, 13.

Here he ſaith, that I omitted *Agnes* Daughter of *John Manwaring* of *Peever* Eſquire, and Wife of Sir *Robert Nedham.*

Anſwer.

Indeed at firſt I made ſome doubt of the truth hereof, becauſe I found in my Lord *Kilmorey*'s Pedegree, under the *Herald*'s Seal, that the ſaid Sir *Robert Nedham* married *Maud* Daughter of Sir *John Savage:* But as ſoon as I found out the truth, I rectified that omiſſion in Print, at the end of my Anſwer to the defence of *Amicia,* Pag. 87, as will appear by the ſaid Book, Printed 1673, and did alſo blot out that Match with *Savage* in my own Book, in the Pedegree of that Family, *pag.* 233. and yet he imputes it now again, as if I had not mended the ſame, which is unjuſtly charged here.

[Page 20.] [20] *To the* 18. *Pag.* 13.

Here he ſaith, that *Katharine Manwaring* married *William Newton* probably 1522, and I had ſaid it was 1521, ſo that there was no certainty of what I there ſaid.

Anſwer.

I ſay it is as probable they were married 1521, as 1522, and can abſolute certainties be always found out in matters of this nature in every particular? therefore let it ſtand till he proves it to be an errour.

To the 19. *Pag.* 14.

Here he ſaith, that *Pag.* 335, I ſay Sir *John Manwaring* was Sheriff of *Flint-ſhire* 6. of *Henry* 8. but I take no notice that he was Sheriff there 23 and 24 of *Henry* 7, and alſo 1 and 2 of *Henry* 8.

[21] *Anſwer.* [Page 21.]

What if I did not? It is true what I have ſaid, and well enough without it: for (as I ſaid before) it is not poſſible that I ſhould comprehend every particular, nor any Man elſe; and ſhall my Credit of writing Truth be impeached by him for this, becauſe I cannot know every thing? therefore I have committed no errour herein.

To the 20. *Pag.* 14.

In the ſame *Pag.* 335, I ſay Sir *John Manwaring* died 8. of *Henry* 8. 1515. and no part of 8. *Henry* 8. falls in *Anno* 1515.

Anſwer.

What of all this? It perhaps were better placed to be *Anno* 1516, or 1517. let him find out the abſolute time, and I will mend it.

[22] *To the* 21. *Pag.* 14. [Page 22.]

Here he ſaith, that *Pag.* 335. I ſay Sir *Randle Manwaring* after the death of his firſt Wife, married *Elizabeth* Daughter of Sir *Ralph Leiceſter* of *Toft* 6. of *Edw.* 6. 1551, but (ſaith he) I cannot prove they were married till the Year 1552.

Anſwer.

Therefore let it ſtand *donec probetur in contrarium*, it may yet be ſo for ought I know.

To the 22. *Pag.* 14.

Here he ſaith, that *Pag.* 336. I ſay *Philip Manwaring* Eſquire was the fifth Son of Sir *John Manwaring*, but he was the ſeventh Son born, and not the fifth, as appears by the Monument of the ſaid Sir *John* in *Over-Peever* Church, wherein the Monument of the ſaid *Philip* is alſo.

[Page 23.] [23]*Anſwer.*

It may be ſo, but they all died young, and *Philip* became Heir: If it be an errour, it is but a ſmall one, and not material.

To the 23. *Pag.* 15.

Here he confeſſeth what I ſay to be truth, that the Herald in the raign of Queen *Elizabeth* made for Sir *Randle Manwaring*'s Coat, Barry of twelve pieces, Argent and Gules: See *Guillims* Heraldry, *Pag.* 373. but (ſaith he) the *Manwarings* ſince then have again given two Bars only; and the Coat which the ſaid Sir *Randle* did then uſually bear, was ſix Barrulets; and that I knew the ancient Coat to be ſix Barrulets *Pag.* 330. and not Barry of twelve pieces.

Anſwer.

[Page 24.] It is true, that I ſaid the ancient [24]Deed of *Roger Manwaring* made in the raign of King *Henry* the third, was ſealed with an Eſcocheon of ſix Barrulets, *Pag.* 330. but that Coat deviſed for the ſaid Sir *Randle*, *Guillim* the Herald calls it Barry of twelve pieces: I know not the criticiſm in theſe terms of Heraldry, the Heralds themſelves are the beſt Judges herein, and whether we call it the one, or the other, it is not a Pin matter; nor have I committed any errour at all, for I there vouched *Guillim* for it.

To the 24. *Pag.* 15.

Here he ſaith, that I ſay the ſaid Sir *Randle Manwaring* the elder, built the Hall of *Over-Peever* anew, 1586. but (ſaith he) part of the ſaid Houſe was built 1585, and another part was built 1586.

Anſwer.

Is not here a worſhipful exception? It is more proper to aſcribe [25]the time when it was built to the finiſhing of it, than when it was begun, for it was not all built till it was finiſhed. [Page 25.]

To the 25. *Pag.* 16.

Here he ſaith that *Pag.* 336. I call Sir *Philip Manwaring* Secretary of *Ireland* to the Earl of *Stafford*, 1638. whereas the ſaid Sir *Philip* was his Majeſties Secretary of State there.

Anſwer.

Here I confeſs my words were not well ordered, for I intended no more there, than that he was Secretary of *Ireland* in the time of the Earl of *Stafford*, then Lord Lieutenant there, 1638. But I have corrected this in my Notes at the ſide of my own Book long before, without any admonition from Sir *Thomas*.

[26] *To the* 26. *Pag.* 16. [Page 26.]

Here he ſaith, that I ſay the ſaid Sir *Philip Manwaring* died the ſecond of *Auguſt* 1661, at *London*, but (ſaith he) he died at *Weſtminſter*, in Sir *Philip Warwick*'s Houſe, which is in or near to St. *James*'s Park.

Anſwer.

Is not here a ridiculous exception for a wiſe Man to make?

Do not we always ſay in the Country — ſuch a Man died at *London;* whether he died at *Weſtminſter*, or in any of the Suburbs, according to our common uſe of ſpeaking, it is no matter for taking notice at whoſe Houſe.

To the 27. *Pag.* 16, 17.

Here he ſaith, that I take no notice that Sir *Robert Brierwood*
[Page 27.] was made Sergeant at Law 1640, nor [27]that he was made one of the Judges of the *Kings-Bench* 1643. and further ſaith, that *Pag.* 187, I ſay the ſaid Sir *Robert* was made Judg of the *Common-Pleas* 1643. whereas he was never made Judg of the Court of the *Common-Pleas*, but of the *Kings-Bench:* And alſo, that *Pag.* 334. I ſay Sir *John Nedham* was *Juſtitiarius de Banco*, whereby he ſuppoſeth I did there erroneouſly take *Juſtitiarius de Banco* to be a Judg of the *Kings-Bench.*

Anſwer.

For the firſt, It was not neceſſary nor material, to take notice in that place of Sir *Robert Brierwood*'s being made either *Sergeant at Law*, or Judg of the *Kings-Bench;* for though it would have been fuller to have put them in here, yet it is no errour without it: And I had before (as Sir *Thomas* here confeſſeth) among the Recorders of *Cheſter*, Pag. 187, there taken notice
[Page 28.] both of his being *Sergeant at Law*, [28]and being made Judg of the *Common-Pleas;* howbeit Sir *Thomas* ſaith, it ſhould have been Judg of the *Kings-Bench;* be it ſo, I had it but by common fame.

Then as to Judg *Nedham*, I called him *Juſtitiarius de Banco*, Pag. 334. which he ſuppoſeth I do there erroneouſly take for a Judg of the *Kings-Bench*, yet doth he not find me any where ſo expounding it, ſo that he will ſuppoſe I have committed an errour, before there be one.

To the 28. *Pag.* 18.

Here he ſaith, that *Pag.* 336. I ſay *Philip Manwaring* Eſquire married *Helen* Daughter of *Edward Minſhul* of *Stoke* 20 *Jacob.* 1622. whereas they were married 1617, 15 *Jacob.*

Anſwer.

This (I believe) is the moſt material miſtake now charged upon
[29]me, and I have now rectified the ſame, nor do I well remember [Page 29.]
now how it came about.

To the 29. *Pag.* 18.

Here he ſaith, that *Pag.* 337. I ſay that the Stable and Dove-houſe at *Over-Peever* were built by Mrs. *Helen Manwaring* 1654, whereas the Stable was built 1653, and finiſhed within the Year 1654, and the ſaid Dove-houſe was not built till the Year 1656.

Anſwer.

This is another Childiſh exception to put in Print, neither is the firſt of theſe any errour at all.

To the 30, *but miſprinted* 29. *Pag.* 18.

Here he ſaith, that *Pag.* 336. I ſay *Margaret* Wife of *Henry Birkenhed* died at *Cheſter* 25 of *July* 1661, but ſhe died on *Saturday* the 20 of *July* 1661.

[30]Poſſibly I might miſwrite the number 25 for 20, or it might [Page 30.]
be miſtaken by the Printer.

Thus have I taken a view of all his trivial exceptions particularly, and I believe ſuch ridiculous things were never before publiſhed in Print by any wiſe Man, and moſt of them rather Cavils than real Errours, all which he ranketh under theſe four general Heads, Partiality, Omiſſions, Uncertainties, and Miſtakes.

1. As to Partiality. I thank God I dare aver with a clear Conſcience that I had not the leaſt intendment of Partiality towards any; in a word, if there be any thing like Partiality in my Book, it is towards his Family, and whatſoever he chargeth me with in this reſpect, it is altogether unjuſt.

2. As to Omiſſions. No moderate Man who ſhall ſeriouſly weigh all circumſtances of this nature, can judg it equal to impute ſuch as errours; it is ſufficient, that thoſe things be true
[Page 31.] which I do mention, [31]and ſo far as I did then know; for let any Man but conſider, what multitude of particulars or things may be hereafter diſcovered in future Ages, which yet are in obſcurity and appear not, eſpecially in matters of this nature; nay, how many things could I my ſelf now add to my Book, relating to *England*, *Scotland* and *Ireland*, and other things in this County, and Hundred (which I have collected ſince) in caſe it might receive a ſecond Edition, which in this firſt were unknown unto me, and other things not well digeſted or conſidered by me, and God knows whether I may live to ſee a ſecond Impreſſion of it, or no; if I ſhould, how many other things might yet be afterwards further diſcovered: Collections and Corrections would ſtill be further neceſſary, a thing incident to all Books, eſpecially of this kind; nor is it poſſible for a mortal Man to comprehend every particular, for ſtill there will be a deficiency,
[Page 32.] [32]though he take all the care imaginable: But theſe omiſſions charged upon me by Sir *Thomas* in his Admonition, (beſides the unhandſomneſs of it,) are ſo inconſiderable, as they be not worthy an amendment moſt of them.

3. As to Uncertainties. Some things will ſtill be in the dark for want of exact proof in remote Ages, either for punctual time or circumſtances; neither are probable conjectures to be totally rejected herein, though the abſolute certainty be not exactly known, and ſuch may ſtand without any imputation of errour, till the contrary do appear by good proof.

4. Laſtly, as to Miſtakes. *Humanum eſt Errare*, Wilful miſtakes are unworthy, but miſtakes through ignorance are more

pardonable, eſpecially ſmall miſtakes and inconſiderable; but theſe now charged upon me, would have been more handſomly done by a private admonition than a publick, and in Print [33]too, [Page 33.] and in ſuch a malignant manner alſo.

And as to all the Omiſſions, Uncertainties, and Miſtakes before mentioned, they are ſo immaterial, that if my Book ſhould receive a ſecond Impreſſion, an indifferent Perſon would not think it neceſſary to amend above three or four of them, beſides thoſe already acknowledged and amended in Print by me before his Admonition publiſhed; for though many of them may be obſerved by Sir *Thomas* for his private uſe, yet are neither worthy nor fit for a publick view, as to my deſign, and well enough without amendment.

Pag. 19. *of his Admonition.*

Here he reminds the Reader of his former words, *Pag.* 63, of his Anſwer to my two Books, which he repeateth here, namely,— That ſince it did appear that I was reſolved to have [34]the laſt [Page 34.] word, although I had nothing new to ſay; if what I did after that time write, did prove no more to the purpoſe than what I had ſaid in my two Books aforeſaid, he would not appear in Print againſt me any more, but would chuſe to vindicate his Grandmother and himſelf by word of mouth, whenſoever he ſhould have opportunity ſo to do.

Anſwer.

Hereby he would now have the Reader to believe, that what I have writ lately in my ſecond Reply, is nothing more to the purpoſe than what I had ſaid in my two Books, otherwiſe he would again have appeared in Print againſt me, for he had left himſelf that Starting-hole; but now he would chuſe to vindicate his Grandmother and himſelf, by word of mouth, whenſoever he had an opportunity; ſo that he would now inſinuate, that though

[Page 35.] he had promiſed to appear no more [35]in Print againſt me concerning *Amicia*, yet he might now appear againſt me in Print by a ſcandalous Admonition.

Pag. 19. *of his Admonition.*

Here he ſaith in the ſame Page, that ſince that time (that is, ſince he appeared Publickly in Print againſt me: he might have done well to have excepted this Admonition) I have put out at once no leſs than three Books concerning the ſame Subject, that is, concerning the Baſtardy of *Amicia.*

Anſwer.

Now theſe three Books are but one Book digeſted into three parts, and printed all at one time, which he ſo formally calls a ſecond Reply, *Peroratio ad Lectorem,* and the caſe of *Amicia* truly ſtated, for the nature of the things required there to be
[Page 36.] handled apart, which (ſaith he) [36]was certainly a great deal of loſt labour, if my former Books had made the caſe ſo clear, as I all along pretended they did.

But not ſo neither, for though the caſe might be clear enough before, yet I believe it is now made more clear, by removing thoſe miſts which Sir *Thomas* had endeavoured to caſt upon the Truth.

Pag. 20. *of his Admonition.*

Here Sir *Thomas* ſaith, that in all the Books I have written upon this occaſion, the ſame things are ſaid over and over again, as he believes the like cannot be found elſewhere; ſo that it would be pleaſant if ſome Perſon who hath little elſe to do, would take an account how many times I have repeated the ſame things.

Anſwer.

Whereunto I ſay, that the like [37]may be found even in his own Books, whoſoever will take pains to read them over; and what if the ſame things be ſometimes repeated? theſe muſt needs fall as oft as occaſion is offered. [Page 37.]

But now in the ſame twentieth Page he ſaith, —— Though he intends ſpeedily to write an Anſwer to that part of the Record which is mentioned in the 76 and 77 Pages of my *Peroratio*, yet he doth not deſign it at preſent for the publick Preſs, but he will ſhow both it, and his anſwer to my former Advertiſement, unto all knowing Perſons who deſire to ſee the ſame, and he doth not doubt but to give them full ſatisfaction of my miſtakes concerning both thoſe Records, that they do not prove thoſe things which I conceit they do.

Surely I can have no miſtake concerning them, if the Record be truly writ by me, which my Friend hath twice examined, nor do I conceit they prove any thing but what [38]is plain to every rational Man; and it appears by other proof, that *Robert* Earl of *Gloceſter* was not above ten Years old when he was married, and thoſe can be no very knowing Perſons who ſhall be ſo captivated in their reaſon by him as to receive full ſatisfaction concerning my miſtakes therein. [Page 38.]

For if Sir *Thomas* ſhall not aver againſt a Record (as ſometime he hath done againſt an original Deed) his cavils cannot ſmother the truth, nor defend what he here ſaith when it ſhall come publickly to be ſcanned.

Pag. 21. *of his Admonition.*

Speaking here of his Letter mentioned by me in my *Peroratio ad Lectorem*, he ſaith it is poſſible he might write to a Kinſman of his and mine, that Mr. *Dugdale* had delivered his opinion in Print on his ſide, as alſo what he had received from a very good

[Page 39.] hand concerning ſeveral of [39]our Judges, but he knows nothing of his Letter being left with *Throp* the Stationer in *Cheſter*, and he is ſure he did not write that Mr. *Dugdale* moved the Judges in the caſe, for he was not then in *London* when that Meeting was, nor knew of it till that Meeting was paſt, and it was occaſioned by my Appeal to them.

Anſwer.

Do but ſee now his equivocation. It is poſſible he might write that Mr. *Dugdale* hath delivered his opinion in Print: why doth he not ſpeak downright, and ſay, that he did ſo write concerning Mr. *Dugdale*'s opinion? when it is moſt certain that he did ſo write to that Kinſman, and ſeveral others, and though he ſays he knows nothing of the Letter being left with *Throp* the Stationer, yet it is moſt certain that *Throp* had it, and ſhewed it to
[Page 40.] others; why doth he not ſay [40]what it is that he had received from that very good hand concerning the Judges? and then he ſaith, the meeting of the Judges was occaſioned by my Appeal to them: I'le ſwear, that neither I, nor any from me, by my knowledg or procurement, did move any of them to that Meeting: and on the other hand, I believe they would not have had any ſuch Meeting if no Body had moved them to it; and I would fain know what queſtion was moved to them, and by whom.

Pag. 22. of his Admonition.

Here he ſaith, that the queſtion (as I alledge) whether Baſtard or no Baſtard hath nothing of any Law in the caſe, and that it is more proper for the Judges to judg only upon the point of Law: Now (ſaith he) how they can judg of the point of Law if there be nothing of any Law in the caſe, may perhaps be very difficult for any but Sir *Peter* to tell.

[41] *Anſwer.* [Page 41.]

Thus the Reader may ſee his old way of catching at words, though he knows my meaning well enough: I do ſtill affirm, that whether *Amicia* be a Baſtard or no, hath nothing properly of any Law in the caſe, but it is meerly a queſtion of Hiſtory, and cannot be proved but by Hiſtory, Records and Reaſon; and becauſe our reverend Judges have not leaſure to ſearch up all the Hiſtories and Records touching the ſame, it is not fit to be put to them for their opinions, unleſs alſo all the Records and Hiſtories, together with all the reaſons alledged on both ſides were produced before them: But becauſe Sir *Thomas* and others would prove it by a point of Law (though very improperly) formerly diſcuſſed between us in our Books, and which I alledge will not reach the preſent caſe, nor hath he any probable argument [42]out of any Hiſtory, Record, or Evidence to prove her [Page 42.] legitimate: I ſay it is more proper for the Judges to judge on that point of Law in difference between us, than whether *Amicia* be a Baſtard or no, or whether *Hugh Cyvelioc* had a former Wife or no, which hath no Law in the caſe.

Pag. 23. *of his Admonition.*

Here laſtly he tells us, he expects I will write ſeveral Books againſt what he hath here publiſhed about my miſtakes concerning his Family, which if I do, he will not go about publickly to anſwer any of them; but if any one will come to him, he will ſhow proof of all the Uncertainties, Omiſſions, and Miſtakes which he hath charged me withall.

Anſwer.

Whereunto I ſay that I ſhall [43]write no more concerning this [Page 43.] Admonition than this Anſwer here publiſhed, unleſs he ſhall alſo publiſh more ſcandalous things againſt me.

Only I obſerve he will not, or rather cannot ſhow any proofs for my partiality, for that is left out here among the other general Heads mentioned, and it had been better to have left that out before, for I dare appeal to God and his own Conſcience, that he verily believes that I intended nothing of partiality to any Family, nor eſpecially any malignancy to his, and therefore more unhandſomly done to charge it upon me before, and moſt unjuſt.

And what he ſaith of ſhowing proofs of all the Uncertainties, Omiſſions, and Miſtakes here charged upon me unto any one that ſhall come unto him, I believe he will have very few to reſort unto him [44]on that account only, unleſs they were more weighty: and concerning which, I refer my ſelf to my Anſwer here above written.

[Page 44.]

Mobberley, Sept.
the 20. 1676.

F I N I S.

A REPLY

TO

Sir *Peter Leiceſter*'s

Anſwer to

Sir *Thomas Mainwaring*'s

Admonition to the

READER of

Sr *Peter Leiceſter*'s Books.

Written

by the ſayd

Sir *Thomas Mainwaring.*

But never yet Printed.

[1]*A Reply to Sir* Peter Leiceſter's *Anſwer, &c:* [Page 1.]

SIr *Peter Leiceſter* in his *Anſwer* to my Booke, entituled *An Admonition to the Reader of* Sir Peter Leiceſter's *Books*, would willingly clear himſelf from that partiality, and thoſe omiſſions, uncertainties, and miſtakes, which I there charge him with ;

But he is not able to free himſelf from them or any of them, as will hereafter appear,

ffor, As to the ffirſt ; Though [2]he pretends he was impartial [Page 2.] in calling *Odard* (who is mentioned in *Domeſday Booke*) the undoubted Aunceſtor of the *Duttons*, whereas he called *Ranulphus* (who is alſo mentioned in the ſaid *Domeſday Book*) but the ſuppoſed Aunceſtor of the *Mainwarings*, for ſome reaſons which he pretends to give in his ſaid Anſwer to my Admonition, yet I think they are ſuch as will make his partiality in this particular to appear more clearly then it did before ;

For, whereas he tells us of [3]a Record in the 117. Page of his [Page 3.] Great Book, *ſub anno.* 1119. in which are theſe words, Willielmus Conſtabularius *dedit* Newtonam *ſimul cum ſervitio* Hugonis *filij* Vdardi *de quatuor Bovatis ;* And whereas he alſo ſuppoſeth this *Hugh* Sonne of *Hodard* to be *Hugh Dutton* Sonne of *Hodard Dutton*, both in the 250. and 264. pages of his ſaid Book, and cites the ſaid Record and the ſaid two pages of his ſaid Book, in the 3. page of his Anſwer to my Admonition in ſuch a manner [4]as an unwary Reader may eaſily take them for three ſeveral [Page 4.]

proofes, whereas it is but one ſingle Record, So on the other hand the ſaid Record is not ſuch an undoubted Proofe, as he ſuppoſeth it to be; ffor, as he ſayes, it is not abſolutely certain that *Richard Meſnilwaren* or *Mainwaring* who ſucceeded the ſaid *Ranulphus*, was ſon of the ſaid *Randle*, becauſe we do not find the expreſſe words *Richard Meſnilwarin* ſon of *Ranulphus*,
[Page 5.] so [5]I doubt not but the judicious Reader will eaſily obſerve, that the aforeſaid Record doth not ſay *cum ſervitio* Hugonis Dutton *filij* Vdardi, nor *cum ſervitio* Hugonis *filij* Vdardi Dutton, but *cum ſervitio* Hugonis *filij* Vdardi, So that it is poſſible that the aforeſaid *Hugh* Son of *Hodard*, might be an *Hugh* that was Son to another *Hodard*, and not Son to that *Hodard* who held ſome part of *Dutton* and was mentioned in *Domeſday-Book;* And whereas he calls him whom he placeth as the Third
[Page 6.] *Dutton* of *Dutton* thus, *viz.* [6]Hugh *de* Dutton *ſon of* Hugh *ſon of* Hodard, he muſt give mee leave to believe he cannot ſhew mee any Deed or Record of that age, which doth mention that *Hugh* de *Dutton*, to be Hugh *ſon of* Hugh *ſon of* Hodard, as *Sir Peter* there doth, And if he cannot bring any ſuch proofe, it is poſſible that the ſaid *Hugh* de *Dutton* (the Third perſon which he there mentions) might be owner of thoſe Lands which *Odard* held in the Conqueror's time, either as heir to him by an heir female,
[Page 7.] [7]or elſe heir by purchaſe, and yet call himſelf *Hugh* de *Dutton* from the place where he lived, it being as *Sir Peter* hath often confeſſed, very uſuall for perſons in thoſe ages ſo to do.

Yea, but ſayes Sir Peter, *the antient Roll of the Barons of* Halton, *which I have ſeen and tranſcribed in one of my Manuſcripts, noted* Lib. C. 84. 85. *(which Roll ſeemed to be written in a Character of* 300. *years ſtanding at the leaſt) ſayth that* ab ipſo Hudardo venerunt omnes Duttonienſes. *See alſo Monaſticon*
[Page 8.] *Angli-*[8]*canum*, vol. 2. page 187. *and alſo* page 249. *of my Book, but I never knew or heard of any ſuch ancient Roll or Record, wherein it is ſayd* ab ipſo Ranulpho *venerunt omnes* Manwaringi.

To which I anſwer, Firſt, that the ſaid Roll mentioned in *Sir Peter*'s ſaid Manuſcript, and that in the 187. page of the ſaid 2

Volume of the ſaid Monaſticon, and that which he ſpeaks of in the 249. page of his ſaid Book, are but one and the ſame thing, [9]unleſs there be ſome ſmall circumſtantiall differences in them, occaſioned by the often tranſcribing or negligences of ſome Clarks who did write the ſame, and yet they are here ſo expreſſed by *Sir Peter* that an incautelous Reader may through inadvertency take them to be three ſeverall Proofes. [Page 9.]

Secondly, *Sir Peter* in his 4th page of his Anſwer to my Admonition ſayes he never knew nor heard of any ſuch ancient [10]Roll or *Record, wherein it is ſayd, *ab ipſo Ranulpho venerunt omnes Manwaringi;* By which expreſſion thoſe Readers who are not intelligent, may perhaps take that for a Record, in which it is ſayd, *ab ipſo Hudardo venerunt omnes Duttonienſes;* Whereas it is only a thing written by ſome private unknown perſon, and hath ſeveral apparent falſities therein, as will herein hereafter appear. * Note. [Page 10.]

Thirdly, Whereas that Roll [11]ſayes, *Ab ipſo Hudardo venerunt omnes Duttonienſes,* that may be very true, and yet for all that it is poſſible, that *Hugh* de *Dutton* (the Third perſon mentioned by *Sir Peter* in the Pedegree of the *Duttons*) might deſcend of an heir female of the ſaid *Hudard,* and he and all his poſterity take the name of *Dutton* from the name of the place where they lived, which was very uſuall in thoſe elder times, as hath been obſerved before by me, and as *Sir Peter* [12]doth acknowledg in many places in his *Hiſtorical Antiquities,* and elſewhere. [Page 11.] [Page 12.]

Fourthly, *Sir Peter* ſays, that the ſaid Roll which he tranſcribed as aforeſaid, ſeemed to be written in a Character of 300. years ſtanding at the leaſt, by which an unskilfull Reader may perhaps thinke that the Roll it ſelfe was much elder, and that the Roll which *Sir Peter* ſaw, might be but a Copie, whereas the [13]Original it ſelf was not made before the Twenty Second year of King *Edward* the Third, being the year 1348. as you may ſee in *Monaſticon Anglicanum,* vol. 2. page 190. The ſaid Roll ending thus, *Et ſic hæreditas Dominorum de* Lacy *in Comitatu* Eboracenſi, Lincolnienſi, Lancaſtrienſi, et Ceſtrenſi, *et in pluribus alijs* [13.]

locis Regni a nomine, poſteritate dominorum de Lacy, *uſque ad hæredes* Edmundi *Comitis* Lancaſtriæ *prædicti, eſt finaliter jam*
[Page 14.] *trans-*[14]*lata, tempore videlicet* Edwardi *Regis tercij poſt conqueſtum, et anno regni ſui viceſimo ſecundo.* Now how a Roll written by an unknown perſon in the 22th year of King *Edward* the Third (who was the Eleventh King of England after the Conqueſt) can be an undoubted Proofe of thoſe perſons who lived in or near to the time of the Conqueſt, let any indifferent and learned perſon
[Page 15.] judge, and eſpecially when it doth not [15]name any one man, who was the poſterity of the ſaid *Odard.*

Fifthly, The ſaid Roll doth apparently ſhew itſelf to be of no credit at all; ffor as you may ſee in *Monaſt. Angl.* vol. 2. p. 187, 188. it ſays, that *William* Conſtable of *Cheſhire* ſon of *William,* and the Third Baron of *Halton,* dyed without iſſue, and left two Siſters to be his Co-heirs, to wit *Agnes* & *Matilda,* and it ſayes
[Page 16.] that a Knight whoſe name was *Euſtace* marryed the [16]ſayd *Matilda,* and had iſſue by her a Son named *Richard,* and that *Aubertus Grelly* married the ſaid *Agnes;* The words of the ſaid Roll are theſe, *Et iſte* Willielmus *filius* Nigelli *fundator dictæ domus, obiit et ſepultus eſt apud* Ceſtriam. *Cui in hæreditate ſucceſſit filius ejus* Willielmus *junior, qui prædictis Canonicis dedit in excambium alias terras pro terra ſua de* Runcorne, *et alijs terris ſuis; ſcilicet ad* Northonam *villam transferendo Prioratum ante-*
[Page 17.] *dictum. Et iſte* Wil-[17]lielmus *obiit in* Normannia, *unde venerat avus ſuus, et non reliquit hæredem de corpore ſuo, ſed habuit duas ſorores, ſcilicet* Agnetem *et* Matildem, *inter quas diviſa fuit hæreditatis honoris de* Haulton. Matildem *deſponſavit quidam Miles* Euſtachius *nomine, qui fuit poſtea interfectus in* Wallia. *Et* Aubertus Grelly *duxit dictam* Agnetem *uxorem.*

Euſtachius *verò prædictus antequam interficeretur, cum dicta*
[Page 18.] Matilda *habuit filium qui vocabatur* Ricardus. *Et iſte* [18]Ricardus *duxit ſororem* Roberti *de* Lacy, *quæ vocabatur* Aubrey Lyſours, *de qua genuit duos filios, ſcilicet* Iohannem *Conſtabularium, Fundatorem domus de* Stanlowe, *&c.* Whereas *Sir Peter Leiceſter* in his *Hiſtor. Antiquities,* pag. 266. tells you that the

ſaid *Agnes* (not the ſaid *Matilda*) was ſecond wife of *Euſtace Fitz-Iohn*, and that *Richard* (afterward Conſtable of *Cheſhire*) was their eldeſt ſon, and for that he quotes the ſaid 2[d] Volume of *Monaſti-*[19]*con Anglicanum*, pag. 798. 799. wherein you may [Page 19.] find two Deeds verbatim ſet downe amongſt others, in the firſt of which the ſaid *Euſtace* calls *Agnes* his wife, and in the ſecond (which is there ſayd to be in the Cuſtody of *Sir William Conſtable* of *Flamburgh* in *Yorkſhire* Baronet) the ſaid *Agnes* calls herſelf daughter of *William Conſtable* of *Cheſhire*, and there alſo ſpeaks of *Euſtace* her husband, and *Richard* her ſon; But *Sir Peter Leiceſter* takes no notice of this great [20]miſtake in that Roll, ffor [Page 20.] if he had, the miſtake being ſo groſſe, it would have taken away the credit of that Roll, and then there would have been an end of the Argument brought from *ab ipſo* Hudardo *venerunt omnes* Duttonienſes;

But here is another great miſtake in the ſaid Roll, and that *Sir Peter* himſelf in the 269. *page* of his *Hiſtorical Antiquities*, doth take notice of, ffor he obſerves that it is ſayd in the ſaid Roll, that *Maude* de [21]*Clare* wife of *Roger Lacy* was Siſter of [Page 21.] the Treaſurer of *Yorke* Minſter, Whereas *Sir Peter* there tells you, Bevoys *de* Clare *Treaſurer of* York *Minſter had noe ſiſter called* Maude; *for all the ſiſters are punctually reckoned up in the Booke of* Tewksbery, *as you may find them copied out by* Vincent *in his* Corrections *of* Brook's *Catalogue of Nobility*, page 221. *whereby it appears plainly, that thoſe ſiſters alſo were all born after the death of* Roger Lacy; See therefore what Proofes *Sir* [22]*Peter* [Page 22.] doth here bring for undoubted ones, as alſo how impartially he deals in the 5. *page* of his *Anſwer* to my *Admonition* in that expreſſion, viz. *as is certainly recorded of the* Duttons *from* Odard, Whereas there is no certainty of what is there ſayd; Neither is that Roll any Record at all;

And as to that Argument from *Hudard*'s *Sword*, as I find not any thing recorded w[ch] *Hudard* did, to make his Sword [23]to [Page 23.] be preſerved more than the Swords of other Gentlemen of that age, So on the other hand, I give not much credit to theſe kind

of Traditions, ffor, I know but of two concerning my owne ffamily, and can prove them both to be certainly falſe; And if *Sir Peter* will create in me ffaith (equally ſtrong with his) to believe that to be *Hudard*'s Sword, he muſt ſhew me ſome mention thereof in ſome Deed, Will, Paper, Parchment, Roll, or Record,
[Page 24.] made within ſome reaſonable time [24]after the ſaid *Hudards* death, & not in any Parchm[t] or Paper made ſev'all hundreds of years aft' his Deceaſe. I ſhall therefore appeal to the indifferent Reader, whether there be not as great a certainty that *Ranulphus* was the Aunceſtor of the *Mainwarings*, as there is that *Hudard* was the Aunceſtor of the *Duttons;* ffor the Sirname of *Mainwaring* was a fixed name, whereas that of *Dutton* was taken from that place, and the Sirname of *Meſnilwaren* or *Mainwaring*
[Page 25.] [25]as you may ſee in the One Hundred and Eleventh page of *Sir Peter*'s Great Book, was uſed by *Richard Meſnilwaren*, which (except the ſaid *Ranulphus*) is the ffirſt *Mainwaring* that we do find, Whereas *Sir Peter* firſt addes the Sirname of *Dutton* to *Hugh* Son of *Hugh* who was the Third of that ffamily, And in the Table hanged up att *Battaile* Abbey, printed with *Ordericus*
[Page 26.] *Vitalis*, and in *Hollinshead* and *Stow*, and others [26]the ffamily of *Mainwaring* is named as one of thoſe which came in with *William* the *Conquerour*, which that of *Dutton* is not; And as the lands w[ch] *Odard* held in *Dutton*, *Aſton*, *Weſton*, and *Halton* came to the *Duttons*, So the lands of the ſaid *Ranulphus* in *Blaken*, *Wenitone*, *Tatton*, *Pever*, *Warford*, *Little-Pever*, *Cepmundcwich*, *Ollerton*, *Seneleſtune*, *Cocheſhalle*, *Hoiloch*, *Tadetune* (which is the ſame with *Warmincham*) *Norwardine*, *Sundreland*,
[Page 27.] and *Baggeley* in *Cheſhire*, [27]and the Lordſhip of *Waburne* in *Norfolk* were certainly enjoied by the *Mainwarings*, And as all the lands which the ſaid *Ranulphus* had were enjoied by the *Mainwaring's*, ſo for ſome generations after the Conqueſt we find very little land which the *Mainwarings* had beſides thoſe of *Ranulphus*, So that *Sir Peter* inſtead of ſuppoſing *Ranulphus* to be the Aunceſtor of the *Mainwarings*, (if he did not wilfully
[Page 28.] ſhut his [28]eyes) might be as certain of that, as he is that *Hodard* was the Aunceſtor of the *Duttons*.

To the Second.

He will not yet acknowledg that there were Seven *Hamlets* in *Peover*, and ſays *Radbrock* and the other ffour there mentioned by me are not called *Hamlets* as *Cepmundewich* and *Fodon* were, and he alſo ſays that Hamlets *are as it were a* Ville *within a* Ville, *and are places more* [29]*conſpicuous and uſually containing a greater quantity of land then a private place field or tenement gaining certain names*, &c: In Anſwer whereunto, I ſhal firſt obſerve the ſtrange boldneſs of *Sir Peter*, who having ſeen *Cepmondwich* and *Fodon* called *Hamlets* in a Deed in a private ffreeholders hand, dated 7. *Edw.* 3. upon which a ffine was levyed in the ſame year, will thereupon poſitivly ſay (though he [30]know nothing thereof) that nether *Radbrock* nor the other ffour were called *Hamlets*, as *Cepmondwich* and *Fodon* were, whereas the contrary thereof doth plainly appear by ſeveral of my Deeds, so that I ſuppoſe the Reader will not give much credit to what *Sir Peter* doth ſay. [Page 29.] [Page 30.]

And *Twyford* which is one of the ffive *Hamlets* omitted by *Sir Peter*, is called the *Mannor* of *Twyford* in *Over Peover*, the like whereof (I believe) cannot be found of either the aforeſaid [31] *Cepmonswich* or *Fodon;* And whereas he alſo ſayes *an* Hamlet *uſually containes a greater quantity of land then a private place field or tenement*, he well knows that many Hamlets do conſiſt of ſingle Tenements, and amongſt the reſt *Fodon* it ſelf ſo doth, *Iohn Beard* being Owner (as *Sir Peter* calls it) of one half of that Meſuage called *Fodon*, and my Tenant *Mr. Richard Acton* being in poſſeſſion of the other half of *Fodon* aforeſaid. [Page 31.]

But *Sir Henry Spelman* in his *Gloſſary* printed 1664. *page* 274. [32]will tell you what an Hamlet is, who writes thus, *Hamel, Hamleta, Hampſell,*] *Diminutiva ab* Ham *pro villa: ſed voces prima et ultima, rarius occurrunt.* Let *autem (al.* lit*) (ut me docuit in Hermathena Goropius)* membrum *ſignificat: ſic ut* Hamleta *propriè pars et membrum ſit alterius villæ, potiùs quam per ſe exiſtens villula.* And afterwards in the ſame page he ſayes [Page 32.]

that an Hamlet is that *quæ medictatem friborgi non obtinuit:*
[Page 33.] [33]*hoc eſt, ubi quinque Capitales plegij non deprehenſi ſunt.* And I doubt not but to ſatisfie any indifferent perſon that the other places are Hamlets aſwell as *Cepmundewich* and *Fodon*, and that the moſt of them are larger then *Fodon* is, (All *Foden* being hardly of the value of 40[li] ꝑ annū) And certainly *Cepmundewich* and *Fodon* were Hamlets before *Thomas* de *Cepmondewich* ſo
[Page 34.] called them in his Deed afore-[34]ſaid, and would have been ſo, if he had not then given them that term, ſo that many places may be and are *Hamlets*, w[ch] were never expreſſly ſo named in any Deeds.

To the Third.

Wherein I charge him with his omitting in the Pedigree of the *Mainwaring's* (page 331.) *Ranulphus*, menc̃oned in *Domeſday-book*, *Richard Meſnilwarin*, *Roger* de *Meſnilgarin*, and *William*
[Page 35.] and *Randle* his Sonnes, [35]*Roger* de *Menilgarin*, *Sir Ralph Mainwaring*, and *Sir Roger* his Son; He anſwers (but very ſtrangely) *that if I had veiwed wel*, page 330. *of his Book, I might have found the laſt* Roger Mainwaring *and* Raph Mainwaring *his father, ſometime Iudg of* Cheſter *to haue been mentioned there, but that either of them were knights it doth not* certainly *appeare to him;* Whereas in the 7. Page of my *Admonition* I did obſerve,
[Page 36.] that [36]in his ſaid 330. page, he did occaſionally take notice of the ſaid *Sir Ralph* and *Sir Roger*, as alſo ſhewed how in other pages of his ſaid Book he had mentioned all the reſt, which he had omitted in the ſaid Pedigree, and did thereupon (as a further aggravation) tax him for leaving all them out in the ſaid Pedigree, which Pedigree he did begin in the following Page; And
[Page 37.] though he ſayes it doth not *certainly* appeare to him, [37]that either the ſaid laſt *Roger* or his father *Ralph* were knights, yet his own Conſcience cannot but tell him that they were knights, and he hath long ſince in print owned them both ſo to be, and I ſhall ſatisfie any perſon that comes to me that they were moſt certainly

knights, And I doubt not (though he ſayes he cannot do it) but I can and haue put thoſe *Mainwarings* which he omitted, into right order, as they ought to [38]be, and that with as certaine [Page 38.] prooſes, as he doth that ffamily, of which he would not have any doubt to be made; However I cannot but againe wonder at his ſtrange boldneſs in the 8. and 9. pages of his *Anſwer* to my *Admonition*, wherein he ſayes, *that though they* (meaning the *Mainwarings* of *Peover* and *Warmincham*) *were Lords of* Over-Peover, *or the greateſt part thereof, that yet* certainly *none of them lived at* [39]Over-Peover *til the time of King* Henry *the Third*, [Page 39.] which is impoſſible for him to know; And why the *Mainwarings* of *Warmincham* might not then aſwel live at *Peover*, if *Warmincham* was their chief Seat, as my ffather and I lived a long time at *Baddeley*, though *Peover* was our principall Seat, or why *Peover* might not be the principall Seat of the *Mainwarings*, though given by *Sir Roger Mainwaring* to his younger Son *Sir* [20] *William Mainwaring*, aſwell as *Sir Egerton* in this age did [Page 40.] give *Egerton* his principall Seat to his younger Son *Sir Philip Egerton*, will be hard, (notwithſtanding *Sir Peter*'s *certainly* to the contrary) for any man to tell; And whereas in his 10th page, (being always excellent at proving Negatives) he ſays *it is certain that* William Mainwaring (meaning him to whom his father *Sir Roger Mainwaring* [41]gave *Peover* in *Henry* the Third's time) [Page 41.] *was no Knight*, and for that end takes notice of a Deed (ffor I haue reaſon to believe he hath ſeen but one ſuch, notwithſtanding his many Quotations) wherein *Sir William Mainwaring* Parſon of *Wernith* was ſubſcribed as a witneſſe, and thereupon concludes, *if you find any* William *ſubſcribed* Domino Gulielmo Mainwaring *in that age, that is to be underſtood* [42]*of* William *the Parſon;* [Page 42.] Herein he fights with his own ſhadow, ffor *Sir William Mainwaring* is not ſubſcribed *Domino Gulielmo Mainwaring*, or as a witneſs to that Deed which proves him to be a Knight, but that Deed concerns Lands in an Hamlett in *Peover*, then paſſed away, whereby a rent was reſerved to the ſaid *Sir William* and his heirs, and there is another *William Mainwaring* witneſs to the ſaid

[Page 43.] Deed, [43]and this will ſhew that *Sir Iohn Mainwaring* who lived in the time of *Henry* the Sixth, was not the firſt Knight of the ffamily of the *Mainwarings* of *Over-Peover*, in *Sir Peter*'s owne ſence, But all other perſons will readily allow thoſe *Mainwarings* who were owners both of *Warmincham* and *Over-Peover* and were Knights, to be of the ffamily of the *Mainwarings* of *Peover;* and *Sir Peter* cannot deny but that I am their heir
[Page 44.] [44]male, and that all the *Mainwarings* who were owners of *Warmincham* were owners of *Peover* alſo, except *Sir Thomas Mainwaring* and *Sir Warine Mainwaring*, who were the two laſt, *Warmincham* going away to *Sir William Truſſel* of *Cubleſdon* the younger with the ſaid *Sir Warine*'s daughter and Heir.

To the Fourth.

He doth confeſs that he may be miſtaken therein, (see, how
[Page 45.] unwilling he is to acknowledg it [45]abſolutly) and ſayes, by long pauſing on my own Deeds, I might the better diſcover it, But it is better to pawſe awhile, then to make too much haſt, for *Canis feſtinans cæcos parit catulos;* And ſure, a little pawſing might ſerve to diſcover that *Hugh Holt* who was husband of *Margery Praers* in the 33. year of *Edw.* 3. was her husband before *Iohn Honford* was, who was her husband in 46. 47. and 50. *Edw.* 3.

[Page 46.] [46]To the Fifth.

He ſays, William Leigh *of* Baggiley *was no Knight* 33. Edw. 3. *when he married* Ioane Mainwaring *for he was then very young and under age, and therefore no error*, &c: *Howbeit he was afterwards a Knight, which he took notice of in due place;* But I ſay that his knowing that he was a Knight, and not calling him ſoe in my Pedigree, adds to the ffault, and he muſt call but very few
[Page 47.] [47]perſons Knights, in Pedigrees, if he will call none ſo, but ſuch as were Knights before the time that they were married.

To the Sixth.

He ſays, *that he that tricked out that ſeale for him* (meaning that which was *two bars with a Lyon paſſant guardant on a Chiefe*) *ſaw aſwell as himſelfe, that the ſeale was Three Barres, and not Two Barres, to the beſt of their judgments;* But I believe the perſon that tricked out the [48]ſeale did trick it out right, ffor it is cutt right, with Two Barres in *Sir Peter*'s Great Book; So that the only fault (I doubt) was, that *Sir Peter* could not Blazon that Coat aright; And he yet will not amend his other Error, but ſtill in his *Anſwer* to my *Admonition* to the Reader calls it a Lyon in Chiefe, inſtead of a Lyon on a Chiefe. [Page 48.]

To the Seventh.

He ſays, *he muſt needs omitt* [49]Iohn *and* Margery, *brother and ſiſter to the ſaid* Helen, *which he then knew nothing of* &c: *and it was not his deſigne to collect all the Children of the younger Sons;* But with his leave, I had informed him of the ſaid *Iohn* and *Margery*, and by the ſame reaſon that he named *Hellen*, he ſhould haue named the ſaid *Margery* and *Iohn*, they being brother and ſiſter to the ſaid *Hellen.* [Page 49.]

To the Eighth.

He ſays, *that he but gueſſed at* [50]*the death of William* (ſonne of *Roger Mainwaring*) *without any exact certainty, when he ſayd he dyed about* 12. *or* 13. *of* Edw. 3. and therefore ſays, *that it is a very poor exception;* But the Exception is no poor one, becauſe I had informed him, that the ſaid *William* was living, and party to a Deed made on the Eve of S[t] *Iohn Baptiſt* 14. *Edw.* 3. which Deed he alſo quotes in the Second line of his 332. page, being the ſame page [51]in which he ſayd, the ſaid *William* dyed about 12. or 13. of *Edw.* 3. [Page 50.] [Page 51.]

To the Nynth.

Whereas I had taxed him with ſaying that *William Mainwaring* ſon of *William Mainwaring* and *Ioane Praers did divide the lands of* Baddeley *between* Iohn Mainwaring his half brother, *and* Iohn Honford; Whereas he had formerly given ſeverall Thouſand
[Page 52.] Acres of Land which came by his Mother, and of which [52]the Demeſne of *Baddeley* was part, ſolely to his ſaid Brother *Iohn*, and only divided the remainder of the ſaid lands; To this, *Sir Peter* anſwers, *Why then he divided the lands of* Baddeley; And I yet ſay, he then divided but part of the lands of *Baddeley*.

To the Tenth.

Whereas he ſayd, that William Mainwaring's *ſeale had the impreſſion of his Coat and Creſt, to wit, in an Eſcocheon, two bars*
[Page 53.] [53]*only, and cornerways on the Dexter Angle, on an Helmet, an Aſſe-head cooped,* &c: which he ſayd, *his heirs have ever ſince continued, to wit,* Argent, two Barres gules, *The Creſt* An Aſſe head cooped proper; His Anſwer is, (becauſe I ſhew they have given the Aſſe head ſeverall other ways) that *I make here no certain Creſt to my Family*, and calls it a very worthy Exception, But
[Page 54.] with his leave, it ſhews his Miſtake, and it is [54]no wonder, that Creſts were not then ſetled, many perſons having ſince then altered their Creſts, and *Sir Peter*'s ffamily hath ſince that time given two diſtinct Creſts, as may be ſeen in the 21. page of my *Reply* to his *Anſwer* to the *Defence* of *Amicia*, And I am ſure thoſe two Creſts of the *Leiceſter's* of *Tabley* did differ much more than thoſe of ours, which I haue mentioned.

[Page 55.] [55]To the Eleventh.

Whereas I had taken notice how *Sir Peter* had ſayd, that William Mainwaring *the husband of* Katherine Belgrave *and* Clementia Cotton *ſettled his eſtate upon his departure out of* Eng-

land *towards* Guien 17. Ric. 2. 1393. *and afterwards made his Will* 1394. whereas the ſaid Settlement made 17. *Ric.* 2. was alſo a Will, and was but of part of that Eſtate which he [56]had [Page 56.] by his Mother, *Sir Peter* to this ſays, *that he nether ſayd he ſettled the lands of the one nor the other, but only that he ſettled his eſtate, which if it were ether of his Mothers lands or Fathers lands, he ſayd truth:* But to this I ſay, that any ingenious indifferent man will eaſily diſcerne the difference betwixt the eſtate of the ſaid *William*, and only part of thoſe lands [57]which he had from his [Page 57.] Mother by deſcent.

To the Twelfth.

Sir Peter ſays, that *probably the marriage of* Iohn Mainwaring *with* Sir Iohn Waren's *widow was about the* 13th *of* H. 4. Which is a thing I never denyed; But that wch I obſerved was, that *Sir Peter* in the 333. Page of his Great Book ſayd, *they were marryed about* 13th Ric. 2. *For*, Sir Iohn [58]Warren *dyed the* 10th *of* Ric. 2. [Page 58.] And I thereupon ſayd, that I did not underſtand how *Sir Iohn Warren* dying in the Tenth of *Ric.* 2. did prove, that *Iohn Mainwaring* marryed his widow, about 13th *Ric:* 2: But it ſeems *Sir Peter* doth not yet perceive to what he ought to anſwer in this place.

To the Thirteenth.

He ſays, my Exception that [59]*he omitted* Iohn Mainwaring's [Page 59.] *being Sherriffe of* Cheſhire 7. H. 4. *was a Childiſh one, as moſt of the other be;* But with his leave I having inform'd him thereof, he ought to haue obſerved it, aſwell as he did that he was Sherriffe there in the 4. 5. and 6. of *H.* 4.

To the Fourteenth.

When I charge him with ſaying poſitivly that Iohn Main-[60]waring *dyed* 11. *of* H. 4. 1410. whereas he was certainly dead [Page 60.]

in the year 1409. he ſays *it is a pittiful exception*, and asketh *why I do not produce authority for the exact time of his death;* But as pittiful as he makes it, *Vincent* in his Corrections upon *Brooke*, and all others in the like Caſe, make ſuch Exceptions, and the time of his death plainly appears to be 1409. by a Precept to
[Page 61.] the [61] Sherriffe of *Cheſhire* to enquire what lands he dyed ſeiſed of, dated at *Cheſter* the 13th of March in that very year; And if a Writer will take upon him to tell the time of a mans death, he ought to tell the true year.

To the Fifteenth.

He acknowledgeth that to be a miſtake, but ſays *he hath rec-*
[Page 62.] *tified it in print long ſince, at the end of his ſaid Booke* [62] *among the Errata, and alſo at the end of his* Anſwer *to the Defence of* Amicia, *ſo ſoon as he knew the certainty of it, and therefore ought not to be charged upon him;* But to this I anſwer, that my work being at that time to obſerve what Miſtakes he made in thoſe two Sheets, and this being one of thoſe, and not amended by him till I told him of it in print, it ought to be mentioned by
[Page 63.] me here; And he [63] runs into another Error, by ſaying he rectified it, ſo ſoon as he knew the certainty of it, ffor I had told him of it, before he printed his Great Book.

To the Sixteenth.

Wherein he had ſayd that *Sir Iohn Mainwaring of* Over Peover *dyed about the very end of* Edw. *the* 4th *his reign*, whereas the ſaid King dyed in the 23th year of his Reign, and the ſaid *Sir Iohn*
[Page 64.] was certainly dead on the [64] 14th of *Aprill*, which was neare the beginning of the 20th year of the ſaid King; He doth implicitly acknowledg his Miſtake, ffor he ſayes, *Had he but ſayd towards the later end of* Edw. 4. *he had not much erred, and he could not put down the exact time till he knew it: Now* Edw. 4. *raigned but* 22. *years in all;* But I ſay I did acquaint him with this Miſtake,

And he here runs into another little one, [65]ffor *Edw.* 4. dyed in the 23[th] year of his reign, and therefore reigned ſomething more then 22. years in all. [Page 65.]

To the Seventeenth.

He alſo acknowledgeth that to be a Miſtake, and though he did amend it at the laſt, yet for the ſame Reaſon which I gave to the 15[th] it ought to be mentioned here; But whereas he ſays, *ſo ſoon as he found out the truth, he rectified that* [66]*omiſſion in print;* That is not ſo, ffor I had before then informed him of it, as you may ſee page 78. at the end of my *Defence of Amicia.* And to put down *Maude* daughter of *Sir Iohn Savage* inſtead of *Agnes Mainwaring* was more then an Omiſſion, though he be loath to confeſs the ſame. [Page 66.]

To the Eighteenth.

Whereas I had ſhewed him that probably *William Newton* was not marryed to *Katherine* [67]daughter of *Sir Iohn Mainwaring* untill the year 1522. although he had poſitivly ſayd that they were marryed in 1521. and thereupon I charged him with writing an Uncertainty as a poſitive Truth; He anſwers, *That it is as probable they were marryed* 1521. *as* 1522. *and can abſolute certainty be always found out in matters of this nature in every particular? Therefore let it ſtand till it be* [68]*proved to be an Error;* But this doth not clear *Sir Peter* from what he ſtands charged with, ffor (as I proved in my *Admonition*) the Deeds concerning the Lands which the ſaid *Katherine* was to haue in Ioynture (at the making of which Deeds ſhe was certainly unmarryed) were dated the one the ffirſt, the other the Second of *March* in the 13[th] of *Hen.* 8. which was in the year 1521. according to the Accompt [69]of the Church of *England,* but in the year 1522. according to the *Iulian* Accompt. Now the *Dominicall-Letter* being that year *E.* and the *Golden-Number* 3. the Second of [Page 67.] [Page 68.] [Page 69.]

March would be *Shrove-Sunday*, and the Twentieth of *Aprill* would be *Eaſter-Day*, and *Lent* being a time not uſuall for Marriages, and eſpecially in thoſe times of Popery, it is more then
[Page 70.] probable the ſaid Marriage was not till [70]after *Eaſter* day, And if ſo, it was not untill the year 1522. However, he doth not clear himſelf from writing an uncertainty as a certainty, which is all that he there ſtands charged with.

To the Nineteenth.

Whereas he ſayd, *that* Sir Iohn Mainwaring *was Sherriffe of Flint-ſhire*, 6. Hen. 8. but took noe notice that he was Sherriffe there 23. and 24. *Hen.* 7. and alſo 1. and 2. *Hen.* 8. He anſwers,
[Page 71.] *It* [71]*is true what he hath ſayd, and well enough without it*, &c: *and ſhall his credit be impeached*, &c: *becauſe he cannot know every thing?* But for all this, He having formerly bene informed of theſe things, is juſtly charged with an Omiſſion herein.

To the Twentyeth.

Speaking of the time of *Sir Iohn Mainwaring*'s death, he ſays, *It perhaps were better placed to be Anno* 1516. *or* 1517. *let*
[Page 72.] *him find* [72]*out the abſolute time, and I will mend it*, But he is not blamed for ſaying *Sir Iohn Mainwaring* dyed, 1515. for his Monument ſays he dyed in that year, but for ſaying he dyed 8. *Hen.* 8. 1515. whereas no part of the 8th year of King *Henry* 8th was in any part of that year; The 8th year of King *Henry* 8th not beginning till the 22th of *Aprill* 1516. So that it ſeemes *Sir*
[Page 73.] *Peter* did not underſtand [73]what he here ſtood charged withall.

To the One & Twentyeth.

Whereas he was charged with ſaying poſitivly, *that* Sir Randle Mainwaring *after the death of his firſt wife, married* Elizabeth *daughter of* Sir Ralph Leiceſter *of* Toft, 6. Edw. 6. 1551. whereas

it cannot be proved that they were marryed till the year 1552. he anſwers, *therefore let it ſtand* donec probetur contrarium, *it may* [74]*be ſo for ought he knows;* Wherein (to ſay nothing of the ſtrangeneſſe of the Rule he there gives) he doth acknowledg what he ſayd to be *uncertain*, and that is all which he was there charged with. [Page 74.]

To the Two & Twentyeth.

Whereas he ſayd Philip Mainwaring Eſq[r] *was the Fifth ſon of* Sir Iohn Mainwaring, when indeed he was the Seventh Son borne, *Sir Peter* anſwers, *it may be ſo, but they all dyed young, and* [75]Philip *became heir: If it be an Error, it is but a ſmall one, and not materiall:* In which Anſwer of his, as he doth acknowledg his Error, but with an *if*, ſoe he alſo runs into two new Errors, in ſaying that they all dyed young, and *Philip* became heir; ffor, *Sir Randle*, the elder brother of the ſaid *Philip* lived to a conſiderable age, being firſt marryed to *Elizabeth* the daughter of *Sir Randle Brereton* of *Malpas*, and [76]widow of *Richard Cholmondeley* of *Cholmondeley* in *Cheſhire* Eſq[r] in or before the year 1518. by whom he had three daughters who were marryed in the life time of the ſaid *Sir Randle Mainwaring* and the ſaid *Elizabeth* his firſt wife, And afterwards the ſaid *Sir Randle* marryed *Elizabeth* the daughter of *Sir Ralph Leiceſter* of *Toft* in *Cheſhire*, by whom he had no iſſue, and the ſaid *Sir Randle* [77]dyed the 6[th] of *September* in the 4[th] and 5[th] years of *Philip* and *Mary*, 1557. So that the ſaid *Sir Randle* did not dye young, living at leaſt 39. years after his ſayd firſt Marriage; Nether did the ſaid *Philip* become heir, but *heir-male* to the ſaid *Sir Randle.* [Page 75.] [Page 76.] [Page 77.]

To the Three & Twentyeth.

Whereas *Sir Peter* was charged with ſaying, *that the* [78]*Herauld in the reign of Queen* Elizabeth *made for the Coat of* Sir Randle Mainwaring *the elder*, Barry of Twelve pieces, Argent & Gules, [Page 78.]

when in truth the ſaid *Sir Randle* did then uſually bear *Argent, Six Barulets Gules,* and that *Sir Peter* (as appears by the 330. page of his Great Book) knew the Coat to be *Six Barulets,* and
[Page 79.] not to be *Barry of Twelve peices Argent &* [79] *Gules; Sir Peter* anſwers, that *it is true, he ſayd the ancient Deed of* Roger Mainwaring *made in the reign of King* Henry *the Third was ſealed with an Eſcocheon of Six Barulets;* But alſo ſays, *that the Coat deviſed for the ſaid* Sir Randle, Guillim *the Herald calls it* Barry of Twelve pieces, and he ſays, *he knows not the Criticiſme in theſe termes of Heraldry,* &c: and he ſays, *he hath cōmitted no error at*
[Page 80.] *all, for he there vouched* Guillim *for it;* But herein *Sir* [80] *Peter*'s unwillingneſs to confeſs an Error will eaſily appear, ffor though it be true that *Guillim* did erre, aſwell as *Sir Peter,* in ſaying that the Coat of *Sir Randle Mainwaring* was *Barry of Twelve pieces, Argent and Gules,* Yet *Sir Peter,* but not *Guillim,* erred in ſaying, *In the reign of Queen* Elizabeth *the Herald made for this* Sir Randle's *Coat,* Barry of Twelve pieces, Argent & Gules;
[Page 81.] ffor *Guillim* ſayd no ſuch thing, and the [81] Coat that the Herald then directed to be born, was not (as *Sir Peter* ſays) *Barry of Twelve Pieces Argent & Gules,* but *Argent Six Barulets Gules;* And the reaſon why the ſaid *Sir Randle* (my Great-grandfather) left off the *Two Barres* (though there be Deeds without date ſealed with *Two Barres*) was, becauſe there were more ancient
[Page 82.] Deeds of his Aunceſtors [82] ſealed with *Six Barulets,* then there were that were ſealed with *Two Barres;* But *Sir Peter* in ſtead of confeſſing this Error, runs into another, in the 23th page of his *Anſwer* to my *Admonition,* where he ſays, that *here I confeſſed what he ſayd, to be truth, that the Herald in the reign of Queen* Elizabeth *made for* Sir Randle Mainwaring's *Coat, Barry of*
[Page 83.] [83] *Twelve pieces, Argent and Gules,* Whereas I am ſure I did neither there, nor anywhere elſe ſay any ſuch thing.

To the Four & Twentyeth.

Whereas he ſayd *the Fabrick of* Over-Peover *being now of*

Bricke, was built in 1586, and I ſayd, part was built in 1585. and part in 1586, he ſays *it is a worſhipfull exception, and* that *it is more* [84]*proper to aſcribe the time when it was built to the finiſhing of it, then when it was begun, for it was not all built, till it was finiſhed;* To which I anſwer that there had been little cauſe for this objection, if I had not told him that one part was built in one year, and another part in another year, But an exact Writer ought to put things exactly down; But [85]this Rule, that an Houſe muſt be ſayd to be built in the year that it is finiſhed, is a very odd one, for then an old houſe that was almoſt but not wholly built an *hundred years agoe,* if the reſt ſhould be built this year might be ſayd to be a very new Houſe, though the greateſt part thereof by much, was built an *hundred* years ſince.

[Page 84.] [Page 85.]

[86]To the Five and Twentyeth. [Page 86.]

He doth acknowledg his words were not well order'd, when he ſayd Sir Philip Mainwaring *was Secretary of* Ireland *to the Earle of* Strafford, whereas the ſaid *Sir Philip* was His Majeſtie's Secretary of State there, and further ſayth *that he corrected it in his Notes at the ſide of his owne Book long before, without any Admonition* [87]*from* Sir Thomas; But as it is ſtrange that he did not diſcover this Miſtake concerning *Sir Philip Mainwaring,* who was his Mother's Brother, in all thoſe years that his Book was written before it was printed, (which was very many years) ſo on the other hand, if he did diſcover it without any Admonition from mee, yet his Book being printed with that Miſtake in it, I had reaſon [88]to take notice of it, and ſoe am juſtified in what I did.

[Page 87.] [Page 88.]

To the Six & Twentyeth.

He would excuſe himſelfe, becauſe he ſays he did write according to what we ſay in the Country; But an exact Writer ſhould write as it really is, and not as people ſay in the Country; And

[Page 89.] I only named the houſe to ſhew it was not in *London,* [89]but (in *Weſtminſter* and) a good way from thence.

To the Seven & Twentieth.

In which I obſerved, how he had omitted in his 336. page, that *Sir Robert Brerewood* was made *Serjeant at Law,* 1640. as alſo that he was made one of the *Iudges* of the Court of *Kings-Bench,* 1643. As alſo how he had ſayd in his 187. page, that Sir Robert
[Page 90.] Brerewood [90]*was made* Iudge *of the* Common Pleas in 1643. whereas the King did conſtitute him in the year 1643. *unum Iuſtitiariorum ad Placita coram Rege,* that is, one of the Iudges of the *Kings Bench,* or *Upper Bench;* but he was never Iudge of the *Common Pleas.* And whereas I had alſo obſerved how in the 334. page of his Great Book, he had ſayd, *Sir Iohn Nedham*
[Page 91.] who married [91]*Margaret* the daughter of *Randle Mainwaring* was *Iuſticiarius de Banco,* and *Iudge* of *Cheſter,* 1. *Edw.* 4. and that I did thereupon ſuppoſe he did erroneouſly take *Iuſticiarius de Banco,* to be a Iudge of the *Kings Bench,* as he had erroneouſly taken *Iuſticiarius ad Placita coram Rege* to be a Judge of the *Common Pleas,* and I alſo gave this reaſon, that I did believe he
[Page 92.] took *Iuſticiarius de Banco* [92]to be a Judge of the *Kings Bench,* or elſe I believe he would have told us, that the ſaid *Iohn Nedham* was afterwards made a Iudge of the *Kings Bench;* ffor he had a Patent to be one of the Iudges of that Court, 1472. 11. *Edw.* 4. as may be ſeen in the *Chronica Series* at the end of
[Page 93.] Mr. Dugdales *Origines Iuridiciales,* printed in the [93]year 1666; His Anſwer is, *that for the Firſt, it was not neceſſary, nor materiall, to take notice in that place of* Sir Robert Brerewood's *being made either* Serjeant at Law, *or Iudge of the* Kings Bench; *ffor though it would have been fuller to have put them in here, yet it is no Error without it. And I had before (as* Sir Thomas *here confeſſeth) among the Recorders of* Cheſter, pag. 187. [94]*there taken*
[Page 94.] *notice both of his being Serjeant at Law, and being made Iudge of the* Common Pleas; *Howbeit* Sir Thomas *ſayth, it ſhould have*

been Iudge of the Kings Bench ; *Be it ſoe, I had it but by common fame; Then as to Iudg* Nedham *I called him* Iuſticiarius *de* Banco, p. 334. *which* Sir Thomas *ſuppoſeth I did there erroneouſly take for a Iudge of the* Kings Bench, *yet doth* [95] *not* Sir Thomas *find me* [Page 95.] *anywhere ſo expounding it, ſo that* Sir Thomas *will ſuppoſe I have committed an Error before there be one;* In which Anſwer the Reader may eaſily perceive how unwilling *Sir Peter* is, to acknowledg his miſtake in calling *Sir Robert Brerewood* a Iudg of the *Common Pleas*, for he only ſayes he had, *pag.* 187. *taken notice both of his being* Serjeant at Law, *and* [96] *being made Iudge* [Page 96.] *of the* Comon Pleas; *howbeit* * Sir Thomas *ſaith it ſhould have been Iudge of the* Kings Bench, &c: So loath he is to directly confeſs his Error, in calling him Iudge of the *Common Pleas;* And then as to that of Iudg *Nedham*, he ſayes, *I do not any where find him expounding* Iuſticiarius de Banco *to be Iudg of the* Kings Bench, ſo that [97] he ſayes, *I will ſuppoſe him to have* [Page 97.] *committed an error, before there be one;* But I believe the learned Reader will eaſily diſcerne, and reſt ſatisfied, that as *Sir Peter* did erroneouſly take *Iuſticiarius ad Placita coram Rege* to be Latine for a Iudge of the Court of *Common Pleas*, So he did alſo erroneouſly take *Iuſticiarius de Banco* to [98] be Latine for a [Page 98.] Iudg of the *Kings Bench*, or elſe he would have taken notice that Iudg *Nedham* was afterwards made a Iudg of the *Kings Bench*, and there is hardly any one who did miſtake the one, but he would miſtake the other alſo, And therefore I think *Sir Peter* had done better, ingeniouſly to have acknowledged [99] both his [Page 99.] Errors, then to anſwer as he doth concerning the fame; And whereas he ſayth in the 28. page, that what he ſayd concerning *Sir Robert Brerewood*, he had it but by *common fame*, I wonder how that could be, ffor when was there ever any common fame that *Sir Robert Brerewood* was made a Iudg of the Court of *Common Pleas*, being [100] he was never any Iudge of that Court? [Page 100.] And ſeeing *Sir Peter* doth acknowledg in print, that he writes what he had *but by common fame*, I may upon juſt grounds declare, that there is the leſs reaſon, to give too much heed to what he doth write.

* Note.

To the Eight & Twentieth.

He doth acknowledg that to be a very materiall Miſtake,
[Page 101.] [101]ſoe that there needs noe more to be ſayd concerning the ſame.

To the Nine & Twentyeth.

Whereas he ſayd that the Stable and Dovehouſe at *Peover* were built in the year 1654. whereas the Stable was built in the year 1653. and finiſhed within the year 1654. and the Dovehouſe
[Page 102.] was not built till 1656. He anſwers, *This* [102]*is another childiſh exception to be put in print, nether is the firſt of theſe any error at all;* But as that of the Dovehouſe is clearly miſtaken two years, ſo it is true, that the Stable was built in the year 1653. ffor it was and would have been a Stable, if that ffret-worke over the head, and the carv'd worke and turn'd worke w^ch^ was done in the
[Page 103.] year 1654. [103]had never been made.

To the Thirtyeth.

Whereas he had ſayd, that Margaret *the daughter of* Sir Randle Mainwaring *the younger, and wife of* Henry Birkenhead *dyed at* Cheſter, 25. Iuly, 1661. when in truth ſhe dyed on Saturday the 20^th^ of Iuly, 1661. and was buryed at *Backford* on Tueſday
[Page 104.] the 23^th^ of the ſame moneth, His Anſwer is, [104]*that poſſibly he might miſwrite the number* 25. *for* 20. *or it might be miſtaken by the Printer;* But a Miſtake he doth confeſs it is, and if it was the Printers, why did he not take notice thereof when he did correct others of the like kind?

Thus I have gone over *Sir Peter*'s *Anſwer* to my *Admonition,*
[Page 105.] and have ſhewed that [105]he cannot clear himſelf from any one of thoſe things which I layd to his charge; Neither do I believe any man living can ſhew ſoe many Miſtakes within the Compaſs of any two Sheets that were ever put in print.

Before I conclude what I have here to ſay, I thinke fit to obſerve how *Sir Peter* in his *Anſwer* to my *Admonition*, [106]*page* 38. [Page 106.] ſayes thus, *If* Sir Thomas *ſhall not aver againſt a Record (as ſometimes he hath done againſt an Originall Deed) his Cavills cannot ſmother the truth, nor defend what he here ſayth, when it ſhall come publiquely to be ſcanned;* By which he firſt implies that I have averred againſt an Originall Deed, which I do deny, and cannot imagine what he [107]doth mean thereby, and ſecondly, he [Page 107.] doth thereby inſinuate that I cannot diſprove what he doth ſuppoſe to be the age of *Matilda* (Counteſs of *Cheſter*) and ſome other things, unleſs I aver againſt that Record which *Sir Peter* in that Caſe doth cite, But as I ſhall agree with him that no man can aver againſt a Record, as alſo that no man can make out a Record by aver-[108]ment, (that is, no man will be admitted to [Page 108.] ſay, a Record ſayes ſo, or a Record doth not ſay ſo, but he muſt either produce the Originall Record, or elſe a Copie thereof, and prove it to be a true Copie) Yet for all this, the Law will give any man liberty to prove the falſity of any Record, as to matter of ffact that is brought againſt him, [109]if ſo he can; (And this [Page 109.] manifeſtly ſhews that *Sir Peter* doth not underſtand what it is to aver againſt a Record) To make good what I here ſay, On Tueſday next before the ffeaſt of *St. Nicholas* the Biſhop, in the 6th year of *Ric.* 2. when *William Mainwaring* my Anceſtor, Son to *Ioane* one of the daughters and Coheirs of *William Praers* of *Baddeley* was [110]beyond the Seas in the King's Service, *Iohn* Son [Page 110.] of *Iohn* Son of *Henry* de *Honford* brought an Action againſt one *William Pryden* for a Meſuage and eight Acres of land in *Burland* in *Cheſhire*, pretending himſelf to be the Son and heir of *Margery* the other daughter and Coheir of the ſaid *William Praers*, and alſo pretending that the ſaid *William Pryden* had diſſeiſed his ſaid Mother *Margery* of the [111]ſaid Meſuage and [Page 111.] lands, and at the ſaid time, the ſaid *Iohn* Son of *Iohn* Son of *Henry* de *Honford* got poſſeſſion of thoſe lands; But notwithſtanding this, the ſaid *William Mainwaring* upon his returne into *England*, by an Inquiſition now remaining in the *Exchequer*

at *Cheſter*, dated the 28th of ffebruary, 21. *Ric.* 2. in the life time
[Page 112.] of the ſaid *Iohn* Son of *Iohn* Son of *Henry* de [112]*Honford*, did prove that the ſaid *Iohn* Son of *Iohn* Son of *Henry* de *Honford* was Baſe Son of her the ſaid *Margery*, and not her Son and Heir, and that there was a Combination betwixt the ſaid *Iohn* and the ſaid *William Pryden*, And the ſaid *William Mainwaring* during his life had all the Land of the ſaid *Margery* after her death,
[Page 113.] and dying without iſſue diſpoſed of her [113]lands, as he pleaſed, and they were enjoyed accordingly;

Soe alſo, if *Iohn a Stile* and *Iohn an Oakes* be at Suit concerning land, and *Iohn a Stile* have one or more Verdicts, and recover againſt the other, notwithſtanding that Record or Records, *Iohn an Oakes* may bring it about againe, and plead the land to be his,
[Page 114.] and perhaps recover the ſame, And [114]this *Sir Peter* knows by a Caſe of his owne, is not impoſſible to be done; Soe alſo if I ſhould ſue *Sir Peter Leiceſter* for ſome Land of his, and in a Record alleadg the ſaid land to be my land, *Sir Peter* notwithſtanding that the ſaid Record ſayd that Land was mine, might plead and alſo prove that land to be his, So that the diſproving
[Page 115.] that matter of fact which [115]is contained in a Record, is not an averring againſt a Record, and therefore *Sir Peter* by this deviſe cannot take away my libertie of diſproving what he hath ſayd in the aforeſaid Caſe, ffor I doubt not but all perſons who have read my book entituled, The *Legitimacy of* Amicia *clearly proved*, are abundantly ſatisfied of *Sir Peter*'s Miſtake of the age of *Matilda*
[Page 116.] Counteſs of *Cheſter*, [116]notwithſtanding the ſaid Record.

And I alſo here declare, that notwithſtanding what I have here written, I doe not at all doubt, but that *Hudard* or *Odard* mentioned in *Domeſday-Booke*, was the lineal Male Aunceſtor of the *Duttons* of *Dutton*, But I alſo think it is full as clear that *Ranulphus* [117]mentioned in the ſaid Book, was the undoubted lineall
[Page 117.] Male Aunceſtor of the *Mainwarings* of *Peover*, and I ſuppoſe every impartial Reader will agree with me herein.

THE LEGITIMACY OF AMICIA,

DAUGHTER OF

HUGH CYVELIOK

Earl of *Cheſter*,

CLEARLY PROVED.

With Full

ANSWERS to all OBJECTIONS that have at any time been made againſt the ſame.

By Sir *THOMAS MAINWARING* of *Peover* in *Cheſhire*, Baronet.

LONDON,

Printed for *Sam. Lowndes* over againſt the *Exeter Exchange* in the *Strand*, 1679.

[1]TO THE Reader.

[A 1, recto.]

Courteous Reader,

HOW unwilling I was to have enter'd into a publique Debate concerning *Amicia*, the Daughter of *Hugh Cyveliok* Earl of *Cheſter*, I think doth clearly appear in my Epiſtle to Sir *Peter Leiceſter*, before my Defence of the ſaid *Amicia*, wherein I told him, That if he would have been contented, to have delivered what he did conceit concerning her, as an uncertainty onely, (as he had done that of *Roger* Son of the ſaid Earl *Hugh*) that he knew I would have [2]reſted [A 1, verso.] ſatisfied with the Judgment of thoſe many knowing and unconcerned Perſons, that had diſſented from him therein, and would never have given him and the Reader the trouble of any lines of mine.

Though Sir *Peter Leiceſter* would not grant me this requeſt, yet of his own accord, he propoſed at the firſt, (as appears by ſeveral Letters of his to me, which I yet have, and were all written with his own hand) that what I had objected againſt his Reaſons, ſhould be printed in the Body of his *Hiſtorical Antiquities;* But afterwards altering his mind therein, he offer'd to have it put into

the *Addenda*, at the end of his ſaid Book; and he withal did declare, that he intended not to reply, but if he did, [A 2, recto.] he would reply but once, and after-[3]wards ſent me a ſhort Reply, which he there ſaid was the laſt that he would write concerning the ſame.

Notwithſtanding this, he did again change his mind, and was unwilling that what I had written, ſhould be printed with his *Addenda*, at the end of his ſaid *Hiſtorical Antiquities;* and inſtead of Printing the ſhort Reply, which he ſent to me, he ſent for the ſaid Reply back, and did Print an Anſwer to my *Defence of* Amicia, which was larger than what Sir *Peter* and I had then both of us publiſhed upon that occaſion; for, as appears in my *Defence of Amicia*, Sir *Peter*'s words, and what I did write, were comprehended in 75 pages, whereas his Anſwer alone did contain 79. And in that Anſwer of his, which was dated *May* 15. 1673. he did alſo in Print affirm, that [A 2, verso.] he had taken leave [4]for ever of that Controverſie.

But for all theſe Declarations both under his Hand, and in Print, he put out another little Book, which he alſo called *Addenda*, or ſome things to be added in his ſaid Anſwer dated *November* 6. 1673. Then he put out two Books together, the one called, *A Reply to my Book*, Entituled, *An Anſwer to Sir* Peter Leiceſter's *Addenda*, Dated *April* 14. 1674. and the other he was pleaſed to call, *My Law Caſes Miſtaken*, and was dated the firſt of *May* 1674. And afterwards he Printed another, which he called, *An Advertiſement to the Reader*, and was dated on the third day of *March* following; but becauſe I found very little of weight in this laſt Book, I did not then publiſh any Anſwer to the ſame.

[5]But notwithſtanding this forbearance of mine, Sir *Peter* did again put out at once, three ſeveral Books, the firſt whereof he called his *Second Reply*, which was dated *May* 28. 1675. the ſecond he called *Peroratio ad Lectorem*, and it was dated *December* 17. 1675. and the third he called, *The Caſe of* Amicia *truly Stated;* which, though Printed and Paged after his *Peroratio*, was dated before it, *viz. Auguſt* the 5*th.* 1675. the reaſon whereof an intelligent Reader I ſuppoſe will eaſily diſcern; and in all theſe three Books, as alſo in his *Advertiſement to the Reader*, there was little if any thing that was new, except two Records. [A 3, recto.]

In the latter end of his ſaid *Peroratio*, he ſaid, *He had done if I had done;* which I looked upon to be as much as if he had ſaid he [6]would never have done, ſo long as I did write; upon which I was put to a ſtand, and did not well know what to do; for as I conſider'd on the one hand, that I had the honour to be her Heir Male, and that not only moſt of the great Families in *England*, but alſo, *Abſit verbo Invidia*, our moſt gracious Sovereign, and many other great Kings and Queens did come out of her Loins, and that therefore I was bound in duty to uſe my Endeavours to clear her herein; ſo on the other hand, I concluded, that if I did continue Writing, I ſhould perpetuate the Controverſie, which I was wholly unwilling to do and did therefore reſolve*, as far as in me did lie, that nothing more of mine ſhould be publiſhed in the life-time of [7]Sir *Peter*, whetherſoever he did out-live me or not. And I do aſſure the Reader, that I did not make this delay, upon any fear of what could reaſonably be ſuppoſed could have [A 3, verso.] [A 4, recto.]

* See *My Admonition* p. 20.

been by him replyed; for as I have anſwered all thoſe numerous Arguments, which he hath hitherto made uſe of, ſo I ſee no cauſe to ſuſpect, that he could have diſcovered any new one, which would have been more ſtrong than thoſe formerly brought; and though he be dead, yet all learned perſons can eaſily judge whether what is here ſaid be ſubſtantial, or not; and I profeſs I do not write this, out of any conceit that it is any diſgrace to deſcend of a Baſtard; but only becauſe I conceive that my Grandmother is very much wronged herein; for I believe there is ſcarcely any perſon whatſoever, (if any at
[A 4, verso.] all) but [8]it would appear that he did deſcend of ſome one that was Illegitimate, if the deſcent of all thoſe perſons was known, with whom his Family had match'd, and of all others of whom he did collaterally deſcend.

PEOVER,
Dec. 24.
1678.

T. M.

[1]THE [Page 1.]

LEGITIMACY OF AMICIA,

Daughter of

Hugh Cyveliok Earl of *Cheſter*,

Clearly Proved.

BEfore I come to the Reaſons which have been alledged either for or againſt *Amicia*, I hold it neceſſary to recite theſe three Deeds following, that thoſe who read them, and the Reaſons on both ſides, may the better underſtand the full ſtate of the Caſe.

[2]*HUgo Comes Ceſtr' Conſtabular' Dapifer' & omnibus Baronibus ſuis & Univerſis Ballivis & hominibus ſuis Francis & Anglicis tam præſentibus quam futuris ſalutem. Sciatis me dediſſe & conceſſiſſe & hac præſenti Karta mea confirmaſſe Radulpho de Menilwarin cum Amicia Filia mea in libero maritagio ſervitium Gilib. filii Rogeri, ſcilicet, ſervitium trium Militum faciendo michi ſervitium duorum Militum ille & hæredes ſui michi & hæredibus meis, quare volo & firmiter præcipio ut nullus ſuper hoc eum vel hæredes ſuos vexet, vel amplius quam ſervitium duorum Militum de hoc prædicto tenemento requirat. Teſte R. Abbate Ceſtr' Bertreia* [Page 2.]

Comitiſſa Ceſtr' Sim. Thuſchet, Rogero de Livet, Gilib. filio Pigot. Rob. fratre ſuo, Frumb. de Ridford. Willielmo de Meinilwarin, Rob. filio Ham. Bettr. Cam. Rob. de Meinilwarin, Ran. de Lee, Rad. Clerico, Petro Clerico qui hanc Kartam fecit & multis aliis apud Lee.

[Page 3.] R*Adulfus de Meidnilwar' omnibus præſentibus & futuris ad quos præſens ſcriptum pervenerit ſalutem. Sciatis me dediſſe & conceſſiſſe & præſenti carta mea* [3]*confirmaſſe Henrico de Aldite-legh in liberum maritagium cum Bertrea filia mea Smelewde cum pertinentiis & Senelleſt': Cum pertinent. & dimid' Pichemere cum pertinentiis ſuis & i. Marc. de redditu annuo in Civitate Ceſtr' de terra quæ fuit Fagun. quam Robert' filius Ermwi de me tenuit illi & hæredibus ſuis qui de dicta Bertrea filia mea pervenient habend' & tenend' de me & hæredibus meis in feodo & hæreditate libere & quiete plene & pacifice in boſco & plano in pratis & paſcuis in aquis viis & in ſemitis in vivariis & in molendinis & in omnibus locis & libertatibus prædictis terris pertinentibus ſicut liberum maritagium melius & liberius teneri pot': Et ego & hæredes mei illi & dictis hæredibus ſuis contra omnes homines dictas terras Warrantizabimus. Teſt' Ran' Com' Ceſtr'. Hug' Com' Ultoniæ, Phil' de Orreby tunc Juſtic. Ceſtr. Joh. de Ptell' Hug. Malebiſſ. Ric. de Vern. Ran. de Meidnilwar. Clerico. Lidulf. de Tuaml' Rob. de Periis, Ric. de Kingeſl. Norm. Pant. Tho. de Orreby, Alured. de Sulinni. Pet. Chan. Gg. de Aldith. Ric. de Rodeſt. Clerico & multis Aliis.*

[Page 4.] [4]O*Mnibus hanc Cartam viſuris vel audituris Rogerus de Menilwarin æternam in Domino ſalutem. Noverit Univerſitas veſtra me pro ſalute animæ Domini Ranulphi quondam Comitis Ceſtriæ & Lincolniæ Avunculi mei & pro ſalute animæ meæ & animarum anteceſſorum & ſucceſſorum meorum dediſſe conceſſiſſe & hac præſenti Carta mea confirmaſſe Deo & Beatæ Mariæ & Abbati & Monachis de Deulacreſſe & eorum Grangie de Biveleg. in liberam puram & perpetuam Elemoſynam liberam communam in boſco meo*

de Pevere, ſcilicet, Ut accipiant de eodem boſco husbot & haybot rationabiliter per viſum alicujus foreſtariorum meorum quantum neceſſe habuerint, ſine impedimento aeriarum niſorum meorum ubicunque nidificaverint, Præterea dedi eis liberam peſſionem & quietam de pannagio quinquaginta porcis quandocunque voluerint in prædicto nemore meo de Pevere, pro hac autem donatione & conceſſione mea, Ego Rogerus prædictus & hæredes mei de prædictis Abbate & Monachis de Deulacreſſe nichil exigere poterimus, niſi orationes & ſuffragia ordinis Ciſtercienſis. Ego vero & hæredes mei ſepedictam donationem & conceſſionem meam ſepedictis Abbati & [5]Monachis & Grangie de Biveleg contra omnes gentes Warrantizabimus imperpetuum. Et ut hæc donatio mea rata & inconcuſſa in ſempiternum perſeveret eam præſentis Cartæ teſtimonio & Sigilli mei impreſſione roboravi. Hiis teſtibus Willielmo de Menilwarin. Willielmo Capellano de Lauton. Ricardo de Moſton. Bened. de Cawdray, Johanne de Motlawe, Willielmo de Pevere, Hugone de Weloc. Nicolao de Wereford, Gilberto Gekell, & aliis. [Page 5.]

Now that the ſaid *Amicia* was undoubtedly legitimate, will be proved by theſe following Arguments or Reaſons;

I. Firſt, Becauſe the ſaid *Hugh Cyveliok*, as appears by the firſt of the ſaid Deeds, did give unto *Ralph de Menilwarin* or *Mainwaring* with his daughter *Amicia* in free Marriage the ſervice of *Gilbert* ſon of *Roger, viz.* the ſervice of three Knights Fees, doing to the ſaid *Hugh* and his Heirs the ſervice of two Knights Fees; But our Common Law neither now, nor at any time heretofore allowing that Lands or Services could be given *In libero Marita-*[6]*gio*, with any [Page 6.] perſon that was not of the blood of the Donor, as you may ſee *Coke* upon *Littleton*, Fol. 21. b. Conſequently neither Lands nor Services could be ſo given with a Baſtard daughter by the reputed Father, becauſe a Baſtard is not *de ſanguine Patris*, as you may find *Dyer*, Fol. 374. b. And therefore it neceſſarily follows, becauſe the ſaid *Amicia* had

Services given with her in Franke Marriage by her ſaid Father, that the ſaid *Amicia* was not a Baſtard.

II. Secondly, If the Reader pleaſe to obſerve, how in the firſt Deed, *Hugh Cyveliok*'s Counteſs is a Witneſs to the giving of thoſe Services in Free Marriage with *Amicia* daughter to the ſaid Earl *Hugh;* As alſo how in the ſecond Deed, *Ralph Mainwaring*'s daughter is called *Bertred* after the Counteſs, which probably, according to Sir *Peter Leiceſter*'s opinion under his own hand in *April*, 1664. was occaſioned by the ſaid Counteſs being Godmother to the ſaid *Bertred Mainwaring;* As alſo how *Randle* Earl of *Cheſter*, was a Witneſs
[Page 7.] to what was given with the ſaid *Ber-*[7]*tred Mainwaring* in Free Marriage to *Henry de Alditelegh*, who was Great Grandfather to the Famous *James Audley* who warred in *France;* As alſo how, as appears in Sir *William Dugdale*'s Antiquities of *Warwickſhire*, Pag. 88. *Ralph Mainwaring* was with the ſaid Earl at *Coventry*, and a Witneſs to his Charter to the Burgeſſes there ; As alſo how *Roger de Meinwaring* and *Henry de Alditeley*, who married his Siſter. *Monaſt. Anglic. part.* 1. *pag.* 891. are Witneſſes to the Deeds of *Randle* Earl of *Cheſter* and *Lincoln*, concerning his Abby of *Deulacres;* As alſo how the ſaid *Roger Mainwaring*, as appears by the ſaid third Deed, did give ſome Priviledges to the ſaid Abby of *Deulacres;* As alſo how *Ralph Menilwarin* or *Mainwaring*, as appears by Sir *Peter Leiceſter*'s Hiſtorical Antiquities, *part* 2. *pag.* 130, 131, 139, 143, and 144. is a Witneſs to one Deed of *Hugh Cyvelioks*, and to three other Deeds of the ſaid Earl *Randle* (who in ſome of them is alſo ſtiled Duke of *Britain*, and Earl of *Richmond;*) As alſo how the ſaid *Ralph de Mei-*
[Page 8.] *dinwarin* or *Mainwaring*, is a [8]Witneſs to *Hugh Cyveliok*'s Deed of Confirmation to the Priory of *Calc* in *Darbiſhire*, as you may ſee in the Additions to the Second Tome of *Monaſticon. Anglic.* Printed with the Third Tome, *pag.* 97. I ſhall leave it (without any more words) to the Reader to

judge, whether theſe Circumſtances be not ſuch, as do ſhew a more great and conſtant Intimacy, betwixt the ſaid two Families, than probably would have been, if *Ralph Mainwaring* had married but an illegitimate daughter of the ſaid Earl.

III. Thirdly, Becauſe as you may ſee in the ſaid third Deed, *Roger Menilwarin* or *Mainwaring*, Son of the ſaid *Ralph* and *Amicia*, doth call *Randle* Earl of *Cheſter* and *Lincolne* his Uncle, which if *Amicia* had been illegitimate he would not have preſumed to have done; for though it be true, that *Baſtards* in *Hiſtories* and *Records* are many times called, Coſin, Brother, Uncle, Son, and Daughter, yet that is done where the perſons came to be very Great, as *Robert* Earl of *Glouceſter* did, or elſe they are ſo called by [9]thoſe that write [Page 9.] the Hiſtories of them, or elſe are ſo termed by their Relations, who out of their humility, did condeſcend ſo to ſtile them on ordinary occaſions, though it were not their due; But I believe it will be very hard to find one that can certainly be proved a *Baſtard*, or the Son of a *Baſtard*, who doth in a Deed made by himſelf, call ſo great a perſon as the Earl of *Cheſter* was, his Brother or Uncle, unleſs he came to be a very great perſon himſelf, ſo that this Argument is alſo of very great force and weight.

IV. Fourthly, I do conceive, that *Hugh Cyveliocks* paſſing of ſervices in the firſt Deed to the ſaid *Amicia*, and uſing theſe words, *Cum filia mea*, doth abſolutely prove that ſhe was a lawful Child, and by conſequence by a former Wife; for if you take notice of what Sir *Henry Spelman* writes in his *Gloſſary*, on the word *Baſtardus*, you will find him quoting *Couſtum. du Normand Artic* 77. *in Annot.* Thus, *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non com-*[10]*prehenduntur Baſtardi*, I ſuppoſe therefore [Page 10.] in this caſe, *Amice* would not have been ſtiled *Filia*, as

ſhe is in the ſaid Deed, unleſs ſhe had been a Legitimate Child.

V. Fifthly, I deſire the Reader well to obſerve theſe two Deeds following, the firſt whereof doth belong to *Henry Mainwaring* of *Kermincham*, in *Cheſhire* Eſquire, and the other to *Thomas Ravenſcroft* of *Bretton* in the County of *Flint*, Eſquire, the words whereof do here follow, as they were copied out ſeveral years ſince from the Originals, by Sir *William Dugdale* Knight.

Sciant & omnes præſentes quam futuri quod ego Robertus Dominus Moaldie & ſeneſcallus Ceſtrie, conceſſi & præſenti Karta confirmavi domui ſce' Werburge Virginis in Ceſtria & Monachis ibidem Deo ſervientibus totam Villam de Gooſtree plene & integre cum omnibus pertin' ſuis in puram & perpetuam elemoſynam pro ſalute anime mee & animarum prædeceſſorum meorum, liberam quietam & ſolutam ab omni ſeculari ſervicio & omni
[Page 11.] *ſeculari exactione. Ita quod in eadem Villa de* [11] *Gooſtree nihil ad opus meum vel hæredum meorum retinui præter elemoſynam & orationes & tantam libertatem in ipſa eadem Villa prædicte domui & prædictis Monachis conceſſi quod in poſterum nullus hæredum meorum quicquid libertatis ſuperaddere poſſit. Et ut hec mea conceſſio rata & inconcuſſa permaneat imperpetuum eam ſigilli mei appoſitione roboravi. Hiis teſtibus Rad' de Menilwar' tunc Juſticiar' Ham' de Maſci Gwar de Vern' Rad' fil' Sim' Pho' de Orreby. Sim' de Thurſchet Rog' de Menilwar' Willielmo de Venables. Toma Diſpenſatore Rob' fil' Picot' Petro' Clerico Com' Ricardo de Vern' Rob' de Menilwar' Brito Paulum Patr' de Moberl' Liulf' de Twamlow. Peers de Sur' Ran' de Praers' Ricardo de Kingſl' Jo' de ſancta Maria, & multis aliis.*

Sciant præſentes & futuri quod ego Alanus de Boidele dedi & quiet' clam' fratri meo Willielmo de Boidele & hæred' ſuis Doccliſton in feod' & Dominicis cum omnibus pertin' infra Limam.

Tenend' & habend de Domino meo Ranl' Com' Ceſtr' & hered' ſuis faciend' ſervicium de prædict' terr' ſc. De quatuor feod' & dimid' prænominato Domino meo Ranl' Com' [12]Ceſtr' & hæred' ſuis. Et ego vero Alanus de Boidele & hered' mei prædict' terr' cum omnibus pertin' prænominato Willielmo de Boidele & hæred' ſuis contra omnes homines & feminas cum pertin' warrantizab. Et quia volo quod hec mea donatio & quiet' clam' ſtabilis & inconcuſſa & rat' permaneat præſenti ſcripto ſigillum meum appoſui. His teſt' Domino Ranl' Comite Ceſtr' domino Rad' de Mainwaringhe tunc Juſticiar' Ceſtr' domino Roberto de Monte alto, Domino Hug' Diſpenſar' Domino Ham' ſen' de Maſcy, Domino Warino de Vernun, Domino Willielmo de Venables. Toma fil' Willielmi de Goulborn, Petro de Bekering. Rob' tunc perſona Gropenhale ſcriptor' hujus ſcripti & multis aliis.

[Page 12.]

I ſhall alſo deſire the Reader to take notice of what Sir *Peter Leiceſter* hath obſerved in his *Hiſtorical Antiquities*, p. 160. how that Earl *Randle de Gernoniis* (as doth appear by the Charter there mentioned) did give the Office of Conſtable of *Cheſhire*, in Fee to *Euſtace*, Baron of *Halton*, and his Heirs; and did conſtitute the ſaid *Euſtace* (to uſe the words of the ſaid Charter) *Hæreditarie Conſtabularium & Supremum conciliarium* [13]*poſt me & ſuper omnes optimates & Barones totius terræ meæ.* As alſo p. 161. how the Baron *de Montealto* or *Moald*, being Dapifer, Seneſchal, or Steward of *Cheſhire* in Fee, had the ſecond Place, which is alſo confirmed by ſeveral Deeds, mentioned in Sir *Peter Leiceſter*'s Book, *p.* 129. 130. 139. 144 and 162. In all which, the Conſtable and Steward are named before the Juſtice of *Cheſter*, and all the other Barons; which being ſo, it will be difficult to give a Reaſon (if *Amicia* was but a baſe Daughter) why Sir *Ralph Mainwaring*, in the Deed abovesaid of *Alan de Boidele*, is named as a Witneſs next to the Earl of *Cheſter*, and before Sir *Robert de Monte-alto* or *Moald*, Steward of *Cheſhire*, and ſo many of the other Barons; as alſo in a Deed mentioned in Sir *Peter*'s Book, *p.* 139. why the ſaid *Ralph Mainwaring* is

[Page 13.]

named next to the Counteſs of *Cheſter*, and before *Roger* Conſtable of *Cheſhire;* as alſo why in a Deed in the 143 page of the ſaid Book, the ſaid *Ralph Mainwaring* is again named next to the ſaid Counteſs, and before *Ralph*, the Steward of *Cheſhire*.

[Page 14.] But if *Amicia* was a Legitimate Daugh-[14]ter, the reaſon thereof will be apparent: For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Cheſter* being a Count *Palatine*, and one that is confeſſed by Sir *Peter Leiceſter*, p. 152 and 159. to have Royal Authority within himſelf, and not unfitly to be ſtiled a *Petty King*, having under him his Conſtable of *Cheſhire* in Fee, in imitation of the Lord High Conſtable of *England*, and his Steward of *Cheſhire* in Fee, after the example of the Lord High Steward of *England;* and his Noblemen about him, in imitation of the Barons of the Kingdom; as alſo his Chamberlain, who ſupplieth the Place of Chancellor, and his Juſtices of *Cheſter* (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*) as alſo a Baron of the Exchequer, a Sheriff, and other Officers proportionate to thoſe of the Crown: It is no wonder at all, if theſe great Perſons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of the ſaid Earls.

[Page 15.] Add hereunto, that when Earl *Hugh* [15]*Cyvelioke*, did by his Charter mentioned by Sir *Peter Leiceſter*, p. 131. acquit the Abbot and Monks of *Stanlaw*, of ſome Toll in *Cheſter* (which could be but little before the ſaid Earls death, becauſe the ſaid Earl died in the year 1181. And the Abby of *Stanlaw*, as is confeſſed by Sir *Peter*, p. 267. was founded but in the year 1178.) The ſaid Earl in his ſaid Charter (contrary to all former Precedents, which I have ſeen) doth name the Juſtice of *Cheſter* before both the Conſtable of *Cheſhire*, and Steward of *Cheſhire;* and the reaſon thereof, I ſuppoſe to be, becauſe the ſaid *Ralph Mainwaring*, who was Son-in-Law to the ſaid Earl, was then Juſtice of *Cheſter*,

as he alſo was ſome years in the life time of *Randle Blundevill;* though the ſaid *Ralph*, as appears by his aforeſaid Deed made to *Henry de Alditelegh*, did afterwards part with the ſaid Office, *Philip de Orreby* being Juſtice of *Cheſter*, when the ſaid *Philip* was a Witneſs to the ſaid Deed.

Now this Preeminence could not be given to the ſaid *Ralph*, becauſe he was Juſtice of *Cheſter* (that Office being be-[16]low the Offices of Conſtable and Steward, as appears before) but becauſe of the Relation of the ſaid *Ralph* to the ſaid Earl, and certainly ſuch great reſpect would not have been ſhewed him, upon that account, if his Wife had been an illegitimate Child. [Page 16.]

VI. Sixthly, Becauſe there was ſuch a vaſt diſproportion of years, betwixt *Hugh Cyveliok*, and his Wife *Bertred*, that it cannot be in reaſon imagined, that the ſaid Earl *Hugh* being ſo great a perſon, ſhould ſtay unmarried, until his ſaid Wife *Bertred* was Marriageable; for the ſaid *Bertred* was but Twenty four years of age in the year 1181. when the ſaid Earl *Hugh* dyed, as appears, *Rot. de Dominabus, pueris*, &c. *In Scacc. penes Remem. R. Sub. Tit. Linc. Rot.* 1. by which it appears, that the ſaid *Bertred* was born in the year 1157. But the ſaid Earl *Hugh*, as you may find in the Third Part of Sir *William Dugdale*'s *Monaſticon Anglicanum*, Pag. 226. did, together with his Mother *Maude*, give *Stivinghale*, (which was not *Stivinghale*, vulgò *Stiſhall, in Com. Stafford*, as Sir *Peter Leiceſter* in [17]the 86 Page of his firſt Reply tells us, but it was *Stivinghale*, which is a member of *Coventry*, as you may ſee in Sir *William Dugdale*'s Antiquities of *Warwickſhire*, Pag. 88, 128, 129. and in Sir *Peter Leiceſter*'s Hiſtorical Antiquities, Pag. 129.) And beſides the ſaid *Stivinghale*, the ſaid Earl *Hugh*, and his Mother *Maude*, did give a Mill next to the Park, and ſome other Grounds, to *Walter Durdent* Biſhop of *Cheſter*, and his Succeſſors, to which Deed *Euſtace* the Conſtable was Witneſs; Now the [Page 17.]

ſaid Earl *Hugh* being not in a capacity to ſeal a Deed, until he was One and twenty years of age, and the ſaid *Euſtace* being ſlain (as appears by Sir *Peter Leiceſter*'s Hiſtorical Antiquities, Pag. 266.) in a Battel againſt the *Welſh* in the ſaid year 1157. If the ſaid Deed was made immediately before the ſaid *Euſtace* was ſlain, the ſaid *Hugh* muſt needs be at the leaſt One and twenty years older than his Wife *Bertred;* But, it is very likely that Deed was made ſome years before, *viz.* immediately upon the death of *Randle de Gernoniis;* For the ſaid *Randle* died Excommunicate in the
[Page 18.] year 1153. as [18]you may ſee in Sir *Peter*'s Hiſtor. Antiquities, Pag. 129. and *Stivinghale*, and thoſe other Lands were given for his Abſolution, and the health of his Soul.

But, beſides what is here proved, if you look at the latter end of the *Welſh Hiſtory* put out by Dr. *Powel* 1584, immediately before the Table, you will ſee that the 16 line of the 197 Page of the ſaid *Welſh Hiſtory* is miſprinted, and that in the ſaid Page it ſhould have been Printed thus: *About the ſame time* Hugh, *Son to the Earl of* Cheſter, *fortified his Caſtle of* Cymaron, *and wan* Melienyth *to himſelf.* And you may alſo there find, that the time when the ſaid *Hugh* wan *Melienyth*, was in the year 1142.

Now that this *Welſh Hiſtory* is of good credit, I ſuppoſe cannot be reaſonably denied; for as Sir *Peter Leiceſter* in the 44 Page of his *Hiſtorical Antiquities* doth acknowledge, that in theſe *Welſh* matters he doth chiefly follow the ſame; ſo on the other hand you may find in *Voſſius* his Book *de Hiſtoricis Latinis*, Pag.
[Page 19.] 389. & 390. and in *Iſaackson*'s *Chronology*, Pag. [19]323. And in *Baleus* his Book *de Illuſtribus Scriptoribus Majoris Britanniæ*, Printed at *Baſil*, *Apud Joannem Oporinum*, Pag. 195, 196. And in *Pitſeus* his Book *de illuſtribus Angliæ Scriptoribus*, Printed at *Paris* 1619. Pag. 215. that the ſaid *Caradocus Lhancaruan* was the Author of the ſaid Book, and flouriſhed in the year 1150, and by conſequence was living in the year 1142, when the ſaid

Hugh wan *Melienyth;* And the ſaid *Pitſeus* tells us in the aforeſaid Page, that the ſaid *Caradocus* was *elegans Poeta, eloquens Rhetor, & Hiſtoricus non contemnendus;* And the ſaid *Baleus*, Pag. 196. ſayes that he was *totus conſecratus ad res geſtas recentium Brittaniæ regulorum illuſtrandas;* And in *Baleus* and *Pitſeus* in the aforeſaid Pages, and in *Powells* Notes on the ſaid Hiſtory, Pag. 206. you may find this following *Diſtichon;* viz.

Hiſtoriam Britonum doctus ſcripſit Caradocus
Poſt Caduualladrum regia ſceptra notans.

So that as to the proving of the taking of *Melienyth* by the ſaid *Hugh*, and the time when it was ſo taken, *Caradocus Lhancaruan* is a Witneſs free from any exception, that can be juſtly made.

[20]The onely Queſtion therefore is, Of what Age the ſaid *Hugh* then was? And becauſe that is uncertain, and that I am willing to reckon ſo, as may be moſt diſadvantageous to my ſelf, I will ſuppoſe him to be then but Twelve years old, which is the ſame Age that *Silveſter Giraldus*, in that Edition printed at *London* 1585. Pag. 203. ſayes Prince *Lhewellin ap Jorweth* was of, when he began to infeſt his Uncles, and is indeed as young, as I have obſerved any to appear in ſuch Martial Affairs. Now, if we ſhould believe that *Hugh Cyveliok* did marry the ſaid *Bertred* ſo ſoon as ſhe was Fourteen years of Age, then the ſaid Marriage would happen in the year 1171. at which time, if *Hugh Cyveliok* was born in the year 1130, and was but Twelve years old when he wan *Melienyth*, in the year 1142. yet he would be Forty one years of Age, when he married the ſaid *Bertred.* It cannot therefore be imagined, that ſo great a perſon ſhould continue unmarried till he was above Forty years old, or that he ſhould marry to his firſt Wife, one ſo much different from him in years; But, when he had married a former Wife, who dyed, leaving him only a daughter or [21]daughters, it is no wonder if in his Age, he married a young Lady, to the intent he might have Iſſue-male to ſucceed him in ſo great an Eſtate. [Page 20.] [Page 21.]

Alſo if you look in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, Pag. 131. you may find this Deed of Earl *Hugh*, in which his Mother doth not join with him, which I think fit in this place to Tranſcribe.

HUgo *Comes Ceſtriæ, Conſtabulario ſuo, Dapifero, omnibus Baronibus ſuis, omnibus Hominibus ſuis, Francis & Anglicis, tam futuris quam præſentibus, ſalutem, Concedo Sactimonialibus de Bolintona ſtagnum meum de Dunintona firmum terræ meæ ſicut fuit tempore Henrici Regis, in perpetuam Elemoſynam pro anima mea, & Patris mei, & meorum Anteceſſorum: Et præcipio omnibus Hominibus meis, quod habeant meam firmam pacem, ita quod nullus inde prædictis Sactimonialibus injuriam vel contumeliam faciat. Teſte Roberto Dapifero de Monte alto, Filippo de Kima, Simone filio Osberti, Willielmo Patric, Radulfo filio Warneri, Rogero de Maletot, Johanne Priore de Trentham,*
[Page 22.] *Orm ejus Cano-*[22]*nico, Rogero Monacho de Hambi, Willielmo Clerico Comitis qui Chartam ſcripſit apud Beltesford, & multis aliis.*

I alſo think fit to re-mind the Reader, how I did heretofore acquaint him, in Print, that I had a *Pedigree* by me of the Barons *de Monte-alto*, drawn not long ſince by Sir *Peter Leiceſter*, and written all with his own hand, in which he makes the firſt *Robert de Monte-alto* Steward of *Cheſhire* (who he ſayes lived in the time of King *Steven*) to have Iſſue, (beſides other Sons who were younger) two Sons, *Raph* and *Robert*, who were afterwards ſucceſſively Stewards of *Cheſhire* all which is certainly true.

Now, that, *Robert de Monte-alto*, Steward of *Cheſhire*, who was Witneſs to this Deed, was the firſt *Robert de Monte-alto*, will be manifeſt, becauſe the ſecond *Robert* came not to be Steward of *Cheſhire* during the life of Earl *Hugh*, as appears by the ſaid Pedigree, as alſo in Sir *Peter*'s Book of *Hiſtorical Antiquities*, Pag. 143. and in the 33 Page of my Anſwer to Sir *Peter*'s two
[Page 23.] Books, where you find *Raph* [23]the Steward, elder Brother to the

ſecond *Robert*, out-living Earl *Hugh*, and being a Witneſs to a Deed of Earl *Randle* Son to the ſaid *Hugh*, it will therefore neceſſarily follow, if this Deed of Earl *Hugh* was made immediately before the death of that *Robert de Monte-alto*, who was a Witneſs thereto, that the ſaid Earl *Hugh* was a great deal elder than his Wife *Bertred;* for though the ſaid *Robert* did live ſomething longer than Sir *Peter* doth take notice of, yet I think it cannot be proved that he was living any conſiderable time after the ſaid *Euſtace*, and I know no reaſon why we ſhould conclude that *Euſtace* was ſlain immediately after he was a Witneſs to the other Deed, or that this *Robert* dyed preſently after he was a Witneſs to this Deed ; nay, I think it will appear, that the aforeſaid Deed to the Nuns of *Bolinton*, was certainly made ſome years before the ſaid *Robert* dyed, *viz.* in the time of King *Stephen;* for if it had been made when *Henry* the ſecond was King, Earl *Hugh* would not have ſaid, *Sicut fuit tempore Henrici Regis*, (as he there doth) but he would have ſaid, *Sicut fuit tempore Henrici primi*, or elſe he would have uſed ſome other words to [24]diſtinguiſh King *Henry the Firſt*, from the then King *Henry the Second.* Now King *Stephen* dyed in the year 1154, and *Bertred* being not born till the year 1157, it will from this Deed be very clear, that if Earl *Hugh* had ſealed the ſaid Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the leaſt Twenty four years older than *Bertred* his Wife. And therefore no likelihood at all, that the ſaid *Bertred* was his firſt Wife. [Page 24.]

Againſt theſe Arguments many Objections have been raiſed, that ſo they might make out in number, what they did want in weight; and particularly againſt the firſt Argument, becauſe if that hold, there is no doubt, but the ſaid *Amicia* was Legitimate;

And firſt, it is objected, That *Mainwaring* was not at that time an equal Competitor to have married a Co-heir of the Earl of *Cheſter*, the Co-heirs being married to four of the greateſt Peers of the Kingdom, and therefore from hence, they would inſinuate,

that the ſaid *Amicia* was not Legitimate. To which I anſwer,
[Page 25.] That I do not affirm that *Mainwaring* was [25]an equal Competitor to thoſe great Peers, or that the ſaid *Amicia* was a Co-heir to the ſaid Earl *Randle*, ſhe being, as appears from the aforeſaid Arguments by neceſſary conſequence a Daughter to *Hugh Cyveliok* by a former Wife, and ſo but half Siſter to the ſaid Earl *Randle*, and therefore could not be a Coheir; for, as you may ſee in *Littleton*'s *Tenures*, Sect. 2, 6, 7, 8, one that is but an half Siſter cannot poſſibly be a Coheir to her Brother, or inherit his Lands; however that could have been no ſubſtantial Argument to prove that *Amicia* was not Legitimate.

1. Becauſe ſometimes ſome particular perſons have the fortune to marry Wives far beyond their degrees or Eſtates.

2. Neither was Sir *Ralph Mainwaring* ſo inconſiderable a perſon, as perhaps ſome may conceit him to be: For, beſides that, Sir *Roger Mainwaring*, Son of the ſaid Sir *Ralph*, did after the death of the ſaid Sir *Ralph*, give to Sir *William Mainwaring* his younger Son, *Peover*, as alſo ſome other Lands; the ſaid Sir *Ralph* had alſo the Lordſhip of *Waburne* in *Norfolk*, and the
[Page 26.] Lordſhips, (or great part) [26]of *Rode*, *Blakenhal*, *Warmincham*, *Notherden*, *Aſhton juxta Kelſall*, *Henbury*, and *Pexhull*, *Willaſton*, *Greate Warford*, *Little Warford*, *Whelock*, *Winnington*, *Cokiſhall*, *Tatton*, *Senelleſtune*, *Smalwood*, and half of *Pichmere*; as alſo other Lands in *Cheſhire*; the moſt of which came to Sir *William Truſſel*, who about *Edward the Firſt*'s time, married *Matilda*, the ſole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger Mainwaring*, Son of the ſaid Sir *Ralph* and *Amicia*: And the ſaid Sir *Ralph* was Chief Juſtice of *Cheſter*, which antiently hath been a Place of that great Repute, that Dukes of *York*, *Gloceſter*, *Exeter* and *Ireland*, and Earls of *Nottingham*, *Wiltſhire*, *Suffolk*, *Shrewsbury*, and *Derby*; beſides other great Perſons have heretofore enjoyed the ſame.

And though it hath been objected by Sir *Peter Leiceſter* in the 17 page of his Anſwer to my Defence of *Amicia*, that as to the Note of Dukes and Earls to have been antiently Judges of *Cheſter*, I ſhould have diſtinguiſhed of the times; for that was not till the Reign of *Richard the Second* (who made Deputies to act in [27]their ſtead) before which time he finds no ſuch great perſons [Page 27.] Judges there; yet in this Sir *Peter* was miſtaken, for that perſon which is ſaid in his Catalogue of Judges of *Cheſter* to be Judge of *Cheſter* in the 15th of *Edward the Third*, and by him is onely called *Ralph Stafford*, was Baron of *Stafford* at that very time, as appears by this following Deed, the Original whereof I my ſelf have, and did give to Sir *Peter Leiceſter* a Copy thereof.

SCiant præſentes & futuri quod ego Johanna que fui ux. Johannis Mautrevers in pura viduitate mea dedi conceſſi & hac præſenti carta mea confirmavi Alex. de Venables totam illam placeam terræ cum domibus & omnibus aliis pertin. quam habeo in villa de Wylaſton que vocat. le Rudyngges Habend. & tenend. prædict. Alex. hered. & Aſſignatis ſuis totam prædictam placeam terræ cum pertin. de capitali dom. feodi illius per ſervicia inde debita & de Jur. conſueta libere quiete bene & in pace Jur. & hereditarie imperpetuum cum omnib. libertatib. comoditatib. communibus & eaſiamentis dicte placie terræ quoquo modo pertinentib. Et ego vero predicta Johanna & heredes mei totam predictam placeam [28]terræ cum pertin. predicto Alex. heredibus & aſſignatis [Page 28.] *ſuis cont. omnes gentes Warantizabimus Acquietabimus & defendemus imperpetuum. In cujus rei teſtimonium huic preſenti cartæ Sigillum meum appoſui hiis teſtibus Radulpho Barone de Stafford tunc Juſtic. Ceſtriæ Willielmo de praers Johanne de Wetenhale Thom. de Erdeſwyks Ricardo de Fouleſhurſt Willielmo Hamelyn & Aliis Dat. apud Ceſtriam die dominica proxima poſt feſtum ſancti Barnabe apoſtoli An. Regni Regis Edwardi tertii poſt conqueſtum quinto decimo.*

And as you may ſee in Mr. *Aſhmole*'s *Inſtitution of the Order*

of the Garter, p. 643. 670 & 688. and in *Vincent*'s *Corrections upon Brooke*, p. 488 & 489. and in the firſt Part of Sir *William Dugdale*'s *Baronage of* England, *pag.* 160. the ſaid *Ralph Stafford* was one of the firſt Twenty five Knights Companions of the Order of the Garter, and was afterwards, *viz.* on the 5*th* of *March*, 25 *Edward* III. advanced to the Title of Earl of *Stafford*, and it is impoſſible that there could be any Dukes or Earls made Judges of *Cheſter* before that Earldom was united to the Crown, becauſe
[Page 29.] there were no [29]ſuch perſons belonging to the ſaid Earls (except *John Lacy* Conſtable of *Cheſter*, who was made Earl of *Lincolne*, but was not made ſo as appears in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, pag. 270. till the 23 of *November*, 1232. which was but ſomething above four years before the death of *John Scot*, the laſt of the ſaid Earls.) But there were ever antiently perſons of good quality that were Judges of *Cheſter*, and if it had not always been a place of good repute, the Kings of *England* would never have made ſuch very great perſons to have ſucceeded them therein.

Neither was the Caſe the ſame with the other Daughters of the Earl of *Cheſter*, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*, whereas thoſe four came to be ſuch great fortunes upon the death of their Brother *Randle*, Earl of *Cheſter* and *Lincolne*, without Iſſue, to whom they then became Heirs, they being his Siſters of the whole Blood; and though all, or moſt of them were married before they came to be his Heirs,
[Page 30.] yet the [30]ſaid Earl *Randle* having never had Iſſue, the expectations of that Eſtate added to their other Portions, muſt needs make them very conſiderable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife, and therefore not in a capacity to have a ſhare in that great Eſtate. And whereas it hath been objected, that Earl *Hugh* matching his only Daughter, which he had by a former Wife, would have married her to as conſiderable a per-

ſon as was either provided by himſelf, or his Son for his younger Children by a ſecond Venter; I do anſwer and ſay, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife, becauſe, I know ſome that pretend they can tell of ſome other Daughter or Daughters which the ſaid Earl *Hugh* had by his ſaid Wife; but I do confeſs, I have never ſeen juſt proof of any but her; but ſuppoſing her to be the only Child by his firſt Wife, I have in my firſt Book, *pag.* 23, 24 & 25. ſhewed that there is no ſtrength in this Argument; And I may here further add, that if any will ſearch for Examples, they may find very many, where the elder [31]Siſters, ſometimes, [Page 31.] becauſe ſwayed by their Affections, and ſometimes for other Reaſons, have not been married to ſo great perſons as the younger Siſters have been; Neither can any one tell what Portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters; Neither is there any neceſſity that the elder Siſter, becauſe by a former Wife, muſt have as great a Portion as a younger Siſter by a latter Wife; becauſe many times perſons are not able to give ſo great Portions in their younger days, as afterwards: and becauſe, the Children of the living Wife, are oftentimes better provided for, than thoſe of the dead Wife; and of this, I could, if I pleaſed, inſtance in ſome that I know; and in caſe the Father dies, and leave only Iſſue Female by the firſt, and a Son and Iſſue Female by a latter Wife (as in this caſe) there is great likelihood (beſides the advantage that the Siſters by the latter Wife would have by being Heirs at Law to their Brother he dying without Iſſue) that the Brother will naturally be more kind to thoſe Siſters that are of the whole Blood, and about the ſame age, and bred up with him, than he will be to her that is but [32]his half Siſter, and much [Page 32.] older than himſelf.

And though Sir *Peter Leiceſter* doth object in the 69 page of his Anſwer to the Defence of *Amicia*, That if *Amicia* had been Legitimate, ſhe being of the firſt Venter, would have been more worthy than thoſe of the Second, though that be true, when the

Sifters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Cafe) if there be Sifters of two Venters, and the Brother be of the fecond Venter, then the Sifters that are of the fecond Venter, fhall be preferred before thofe of the firft Venter, becaufe thofe of the fecond Venter are of the whole Blood. And thofe of the half Blood, are fo far from being preferred before thofe of the whole Blood, that as I have herein before fhewed the moft remote of the Kindred fhall be preferred before thofe who are but of the half Blood.

2. Secondly, Againft *Amicia's* being Legitimate, it hath been objected thus;

[Page 33.] [33]If *Hugh Cyveliok* had no other Wife but *Bertred*, then *Amice* muft certainly be a Baftard; for fhe was not a Daughter by *Bertred*, as is granted on all fides.

But *Hugh Cyveliok* never had any other Wife but *Bertred*. *Ergo*, *Amice* was a Baftard.

Now the *Minor* is to be proved by the Affirmer, *Oportet Affirmantem probare;* To which I anfwer,

Firft, That by this Rule, Sir *Peter Leicefter* was as much bound to prove *Amicia* to be a Baftard, as I am bound to prove that *Hugh Cyveliok* had a former Wife; For he as clearly affirmed that as I affirm the other, and there is no reafon why Suppofitions fhould pafs for Proofs any more in his cafe, than they fhould do in mine.

Secondly, That lefs Proof by many degrees will ferve, to prove a thing that was done long fince, than will be required to prove that which was done lately. To inftance in one Cafe, which may
[Page 34.] ferve inftead of many. If you be to prove a [34]Deed that was lately fealed, it will be expected you produce the Witneffes who

were preſent at the ſealing and delivery thereof. If your Deed was ſealed a good while ago, the proving of the Hands will be required: But if the Deed be ſo old, that none alive could know the Hand-writing of the Witneſſes, then the Deed carries its own Proof with it: And the like reaſon there is in all Caſes of Antiquity, and eſpecially in thoſe that are ſo very antient as this is. For, if I did only prove her called a Daughter, being it is ſo long ſince, ſhe ought to be preſumed Legitimate, unleſs the contrary do appear. For the proving ſhe was not by *Bertred*, does not prove that ſhe was a Baſtard; But onely proves that ſhe was either a Baſtard, or elſe by a former Wife: And our Law at this day is, That a Baſtard cannot be proved a Baſtard but in his Life-time; and ſo it anciently was alſo, as appears by the old Treatiſe called *Fleta, lib.* 6. *cap.* 39. *ſect.* 14. where it is thus ſaid, *Si autem poſt mortem alicujus opponatur Baſtardia, non allocabitur; cum defunctus ad talem exceptionem reſpondere non poterit.* Now, if a Perſon cannot be proved a Baſtard immediately after his [35]death, becauſe he cannot anſwer for himſelf, What reaſon [Page 35.] is there to charge *Amice* with Baſtardy ſo many hundred years after her deceaſe. And eſpecially upon imagination onely, without direct proof for the ſame. And proof cannot ſo eaſily or truly be had ſeveral Hundreds of years after the Parties deceaſe, as it might have been had within a few years after the Party was dead.

Thirdly, If this Argument would hold as it is here framed, we ſhould have almoſt nothing but Baſtards in the ancient times: For if all muſt be Baſtards, if we could not tell who their Mothers were, nor directly prove who their Fathers married, we might then conclude, moſt Perſons to be Baſtards that lived in the firſt and ſecond Centuries after the Conqueſt. I ſhall not offer to put the Caſe upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I miſtake not, I find Eight perſons whoſe Wives we are altogether ignorant of, and Six of thoſe perſons left Iſſue, all which Iſſue,

by this Argument, would be Baſtards, which I am confident no
[Page 36.] reaſonable man can or will [36]ſuppoſe; I ſhall inſtance only in one, *viz*, *Roger Menilguariu*, who in the Reign of King *Henry the Firſt*, as you may ſee in the Firſt Part of *Monaſticon Anglicanum*, Pag. 985. gave *Plumley* (a place in *Cheſhire*, near to *Peover*) to the Abby of S. *Werburge* at *Cheſter;* and as it appears by the ſaid Record, the ſaid *Roger Mainwaring* had Three Sons, *William*, *Randle*, and *Wido*. Now if Sir *Peter* ſhould affirm, that the ſaid *William*, *Randle*, and *Wido* were Legitimate, which I verily believe he would not ſcruple to do, I could thus frame his own Argument againſt him.

If *Roger Melinguarin* had no Wife, then, *William*, *Randle*, and *Wido* Sons of the ſaid *Roger*, were certainly Baſtards: But *Roger Melinguarin* aforeſaid had no Wife. *Ergo*, &c.

Now if this Argument would hold againſt *Amicia*, it would alſo hold againſt theſe Three Children of *Roger Mainwaring*, and indeed againſt all other Perſons whoſe Fathers we could not directly, and *in terminis*, prove to have been married, (the Proof
[Page 37.] lying on the Affirmers ſide) [37]the Abſurdity of which is ſo great, that Sir *Peter* himſelf cryes, *God forbid all Children ſhould be concluded Baſtards, whoſe Mothers cannot be proved.*

Alſo it is very hard, if poſſible, to tell whoſe Daughter the Wife of *Robert de Ferrars*, the firſt Earl of *Ferrars* and *Derby* was, and yet he was certainly married, and had Iſſue *William Ferrars*, who lived not to be Earl, and *Robert de Ferrars* who ſucceeded his ſaid Father *Robert*, in the Earldom, and *Wakelin de Ferrars*, and a Daughter named *Iſolda*, married to *Stephen de Beauchamp*, and another Daughter married to *Walchelin Maminot*. So alſo it is unknown who was the Wife of the ſecond *Robert de Ferrars* Earl of *Ferrars* and *Derby*, and yet he alſo was certainly married, and had Iſſue *William* his Son, who ſucceeded him in the ſaid Earldom; ſo alſo we cannot find who was

the Wife of *Ralph de Maunt* Earl of *Hereford*, and yet he was certainly married, and left Iſſue-male. So alſo *William de Mohun*, the Third of that name, and the firſt Earl of *Somerſet* or *Dorſet*, (for thoſe two Counties alwayes going together in thoſe elder times, and both ſerved [38]by one Sheriff (as you may ſee in [Page 38.] *Vincent* upon *Brooke*, Pag. 472.) gave occaſion of indifferency to give the attribute of either, to him that had *tertium denarium*, the third peny of them) was alſo certainly married, for his Grandchild *Reginold de Mohun* was Earl of *Somerſet* after him; and yet our Authors, who write of theſe things, do not know whoſe Daughter the Wife of the ſaid *William de Mohun* was; And to name no more of very many other Noblemen, whoſe Wives are not known, what great wonder is it that we do not know who was the firſt Wife of *Hugh Cyveliok*, by whom he had only Iſſue-female, when it is not known who were the Wives, of the above-named great Perſons, although they had Iſſue Male, by the ſaid Wives: And which is worthy of obſervation, if *Bertred* the ſecond Wife of the ſaid Earl *Hugh*, had dyed before her ſaid Husband, as his firſt Wife did, we had not known whoſe Daughter the ſaid *Bertred* had been; for I think there is no ancient Hiſtorian, who doth ſpeak thereof; neither do I know of any Record, except thoſe which relate to the ſaid *Bertreds* Joynture or Dower, which do tell whoſe Daughter the ſaid *Bertred* was.

[39]3. Thirdly, It hath been objected, That whatſoever is given [Page 39.] in Frank Marriage, is given as a Portion: But the giving of the Services of three Knights Fees in Frank Marriage, for which the Services of two Knights Fees are to be done, doth not ſeem to be a competent Portion, for a Legitimate Daughter of the Earl of *Cheſter*.

To which I anſwer, That the reaſon why Sir *Peter Leiceſter* calls it a Portion, is, becauſe he would have it thought that this was all her Portion; and thence would infer, that ſhe was Illegi-

timate, becauſe ſo very little was given with her; But this doth not well agree with what Sir *Peter* ſayes in the 135 Page of his *Hiſtorical Antiquities*, and 63 Page of his Anſwer to my Defence of *Amicia*, where he tells us, That Baſtards in thoſe elder Ages, were not of ſuch diſrepute as now in our dayes; And that the ancient Northern People admitted Baſtards to ſucceed in their Inheritance, and that *William* the Conqueror was not aſhamed of that Title, who began his Letter to *Alan* Earl of *Little Britain*, (as he did many others) *Ego* Willielmus *cognomento*
[Page 40.] Baſtardus; ſo [40]that I think any Man that will weigh things indifferently, will eaſily and readily conclude, That if ſhe had been but a Baſtard, yet being a Baſtard of ſo great an Earl, and being married to Sir *Ralph Mainwaring*, who was no inconſiderable Perſon, ſhe would have had a far greater Portion than thoſe Services upon thoſe terms they were given; for thoſe Services ſo given, would not be a Portion anſwerable to the Eſtate of an Ordinary Countreyman; And this is ſo clear, that when Sir *Peter Leiceſter* was told, that it was like Sir *Ralph Mainwaring* had a great deal more with *Amicia*, he confeſſeth Pag. 71. of his Anſwer to the Defence of *Amicia*, It may be ſo, What then? So that you may ſee he was at laſt convinced, that thoſe Services could not be her whole Portion; And though we cannot now tell what Portion the ſaid Sir *Ralph Mainwaring* had, yet it is very probable that the Lordſhip of *Henbury* in *Cheſhire*, might be part of the Portion of the ſaid *Amicia*; for as appears in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, Pag. 107. *Henbury* was one of thoſe Towns which *Hugh Lupus* held in De-
[Page 41.] meſne; And I do not find that any *Mainwaring* was [41]poſſeſſed thereof before Sir *Ralph Mainwaring*, who was Husband to the ſaid *Amicia*, neither have I ever yet ſeen or heard of any Record or Deed which ſhews how *Henbury* firſt came to the *Mainwarings*.

But beſides what is here ſaid, Sir *Peter Leiceſter*'s Rule, That whatſoever is given in Frank Marriage, is given as a Portion;

cannot hold good; for any perſon that pleaſeth may give a Woman a Portion, but no man can give any thing in Frank Marriage, with any Woman but ſuch as is of his whole Bloud: as Siſter or Couſin collateral within the fourth Degree, ſo as they may not Enter-marry by the Law. As Mr. *Hughes* ſays in his *Grand Abridgment of the Law*, p. 970.

4. Fourthly, It hath been objected, That the Antient Hiſtorians of our Nation, as *Polichronicon*, writ by the Monk of *Cheſter*, *Henry Knighton*, the Monk of *Leiceſter*, and others; alſo *Stow* and *Cambden* have Recorded the Lawful Daughters and Coheirs of Earl *Hugh*. And alſo the Record of 18 *Hen.* 3. And had *Amice* been a Legitimate Daughter, it is [42]likely that theſe Hiſ- [Page 42.] torians would not have omitted her, but of her there is *Altum ſilentium* among all the Hiſtorians and Records.

To which I anſwer, That in this Argument, there is no weight at all; for thoſe Hiſtorians which Sir *Peter Leiceſter* doth ſpeak of there, do not take upon them to give an account of all the Children of Earl *Hugh*, but only to tell who were the Heirs of *Randle Blundevil* which none of his Siſters could be, unleſs ſuch as were of the whole Bloud to him; and of this Sir *Peter* was ſo ſenſible, that in his *Hiſtorical Antiquities*, p. 138. he doth confeſs, that this is not a ſure evincing Argument; but Sir *Peter* did forget himſelf, when he ſaid there was *Altum ſilentium* concerning *Amicia*, among all the Hiſtorians which he there named; for Mr. *Cambden*, which is one of thoſe which Sir *Peter* himſelf doth there mention, as he tells us, who were the Coheirs of *Randle Blundevil*, ſo he takes notice of the Wife of the ſaid *Ralph Menilwarin* or *Mainwaring*, and that without any Brand of Baſtardy at all, as you may ſee in his *Britannia*, in his Deſcri-[43]ption of the Country of *Cheſter*, whoſe words are theſe: [Page 43.] *Cum jam Danus ſub Northwich, de qua dixi, cum wevero aquas conſociaverit, in occaſum recta prolabitur Wever, Peverumq; recipit ab ortu, Qui præterfluit, & nomen facit Pevero, ubi habet ſedem*

vetuſta illa nobilis familia de Meinilwarin vulgo Manewaring, e qua Radulphus duxit filiam Hugonis Kevelioc Comitis Ceſtriæ, ut conſtat ex charta antiqua penes Ranulphum ejusdem familiæ nunc heredem. And to let you ſee how little ſtrength there is in objecting, That a Daughter is not Legitimate, becauſe our Hiſtorians do not mention her, I ſhall here inform you of one *Matilda*, a Daughter to *Randle de Micines* or *Meſchines* one of our Earls of *Cheſter*, who was married to *David* Earl of *Dundee* in *Scotland;* which *David* was Brother to *Malcolme*, and *William* Kings of *Scotland*, and was Nephew to *Matilda* or *Maude* who was Queen of *England*, and Wife to King *Henry the Firſt;* and yet all our antient Hiſtorians, except *John Bromton*, do wholly omit the ſaid *Maude*, and ſo alſo doth Sir *Peter Leiceſter*, though he ſpent ſo many years in Writing and Reviewing what he had written of the Earls [44]of *Cheſter* ſince the *Norman* Conqueſt; and ſo do all our Modern Writers that I have read: The words of the ſaid *John Bromton* (who writes from the year 588, to the year 1198.) as they are in his *Chronicon*, col. 966 and 967. are theſe:

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ANno Domini M. lxix. & Regis Willielmi quarto, Malcolmus rex Scotorum cum infinita multitudine per Cumberlandiam verſus orientem ſe divertens, vniverſam Teſedale & loca ejus finitima ultra citraq; feroci depopulatione vaſtavit. Depopulataq; quadam parte Clivelandiæ quaſi ex ſubito Herſerneſſe occupavit. Indeq; per terras ſancti Cuthberti diſcurrens, multos rebus & vita privavit, villas & eccleſias cum iis qui in eas confugerant, concremando, ſenes & vetulæ gladiis obtruncantur, alii indifferenter confodiuntur, raptiq; ab uberibus matrum parvuli in altum projiciuntur, & lanceis excipiuntur: hac enim crudelitate maxima Scoti beſtiis crudeliores pro ludi ſpectatulo delectabantur, qui demum in terram malam revertentes, juvenes & virgines, robuſtos, miſeros & captivos ſecum duxerunt, & eos perpetua ſervitute dampnaverunt, in [45]*tantum ut vix eſſet domus in Scotia, quæ ſervo aut ancilla Anglici generis careret. Tunc vero ſecundum quoſdam, iſte Mal-*

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colmus rex Scotiæ in revertendo de Anglia, dictam Margaretam dicti Edgari ſororem primo invenit, & eam in uxorem duxit, per quam poſt-modum ferocitatem in parte dimiſit, & honeſtior factus eſt. Et ex qua per proceſſum temporis genuit ſex filios, & duas filias, ſcilicet Edwardum primogenitum, qui cum patre interfectus fuit; Edmundum ante patrem decedentem; Edgarum, qui poſt patrem novem annis regnavit; Edredum ante patrem decedentem; Alexandrum, qui poſt Edgarum fratrem ſuum xvii. *annis regnavit, & David, qui poſt Alexandrum fratrem ſuum* xxix. *annis regnavit. Et ex Matilda de ſancto Licio genuit Henricum comitem ſed non regnantem. Genuit etiam Malcolmus rex ex dicta Margareta Matildam poſtea regis Angliæ Henrici primi uxorem, ex qua proceſſit Matildis imperatrix. Altera quoq; filia Malcolmi, Maria nomine, Euſtachio Comiti Bononiæ, poſtea nupta fuit, de qua proceſſit Matilda quæ poſtea Stephano regi Angliæ extitit maritata. Henric. vero Comes filius David regis genuit tres filios, ſcilicet Malcolmum, qui poſt David* xii. *annis* [46]*regnavit; Willielmum* [Page 46.] *qui poſt fratrem ſuum* xlix. *annis regnavit, & David Comitem de Dundee. Willielmus vero rex genuit Alexandrum ſecundum, qui regnauit* xxxv. *annis, & genuit Alexandrum tertium, qui* xxxvii. *annis regnavit, & genuit Margaretam neptem regis Edwardi Angliæ primi poſt conqueſtum. David autem comes de Dundee filius Henrici Comitis genuit ex Matilda filia Ranulphi Comitis Ceſtriæ* iiii. *filias, ſcilicet Margaretam, Matildam, Iſabellam, & Aldam. Margareta vero nupſit Alano de Galeway, ex qua proceſſit Devergoil uxor Johannis de Balliolo, quæ genuit Johannem de Balliolo, quem dictus rex Angliæ Edwardus primus poſt conqueſtum in Regem Scotiæ poſt mortem Alexandri tertii præfecit. Altera vero filia dictæ Margaretæ Elena nomine, Comitiſſa Wintoniæ, produxit Comitiſſam de Ferers Margaretam, Elenam de la Souch, & Elizabetham Comitiſſam de Boghan. Matilda vero altera filia David Comitis ſine liberis deceſſit. Tercia vero filia ejuſdem Comitis David Iſabella, nupſit Roberto de Brus qui genuit Robertum, & ille Robertus genuit Robertum regem Scotiæ, qui genuit David regem Scotiæ, cui rex Angliæ Edwardus a conqueſtu*

[Page 47.] *tercius ſororem ſuam Johannam ma-*[47] *ritavit. Quarta vero filia Alda nupſit Henrico de Haſtyng, qui genuit Henricum, qui genuit Johannem.*

Now if a Daughter to an Earl of *Cheſter*, who was Wife to ſo great a perſon, was omitted by our Hiſtorians, what wonder can it be, if *Amicia* the Daughter of *Hugh Cyveliok*, and the Wife of *Ralph Mainwaring*, was alſo omitted by them? And as *John Bromton* did mention the ſaid *Matilda*, becauſe he did know there was ſuch a one, though other Hiſtorians were ignorant thereof; and as Mr. *Cambden* did take notice of the Wife of the ſaid *Ralph*, becauſe he had ſeen the Deed which proved it, in the hands of my Great Grandfather *Randle* (who was afterwards Sir *Randle Mainwaring* Knight) ſo I ſuppoſe that our other Authors, both Antient and Modern, would have mentioned the ſaid *Matilda* and *Amicia*, if they had ſeen what *John Bromton*, and Mr. *Cambden* did ſee.

5. Fifthly, It hath been objected, That without any alteration
[Page 48.] made by any Act of Parliament, the Common-[48] Law in ſundry things is alter'd at this day, from what it was in former ages, long after *Henry* the Second, *Coke upon Littleton*, fol. 34. ſect. 39. *Coke* ibid. fol. 3. a. fol. 8. a. at the bottom of the Page, and on the other ſide of the bottom, and fol. 26. b. ſect. 29. wherein there is ſuppoſed to be Proofs that the Common-Law is altered in many things without any Act of Parliament, from what it was in thoſe elder times.

To which I anſwer,

1. Firſt, That if the Common-Law had been or could be altered other ways than by Act of Parliament, yet it would make nothing, as to the Point in hand, unleſs the Common-Law had been altered in the Caſe of Frank Marriage itſelf.

2. Secondly. That Sir *Peter Leiceſter* did miſtake himſelf

when he thought my Lord *Coke* ſaid, that the Common-Law had been altered in thoſe particulars, which Sir *Peter* doth mention in theſe places that are cited before; Indeed my Lord *Coke* tells us, that the Common-Law was taken and holden ſometimes differently from what it is ta-[49]ken now, and withal, fol. 8. b. at the bottom tells us, that if it be an antient Grant, it muſt be expounded as the Law was taken at the time of the Grant; And theſe Caſes which Sir *Peter Leiceſter* doth cite, are ſome of thoſe which my Lord *Coke* doth bring to prove that the Common Law was differently taken in former Ages in ſome things, from what it is taken to be in this Age, but not to prove that there was a change of the Common Law, without an Act of Parliament; To inſtance therefore in every one of thoſe particulars which Sir *Peter Leiceſter* hath as aforeſaid taken notice of; In that in fol. 34. ſect. 39. my Lord *Coke* tells us, that in antient times, as it appeareth by *Glanvil*, lib. 6. cap. 1. It was taken that a Man could not have endowed his Wife *Ad oſtium Eccleſiæ*, of more than a third part, but of leſs he might; But at this day the Law is taken, as *Littleton* here holdeth. But my Lord *Coke* ſays not that the Law is altered therein from what it was; ſo alſo fol. 3. a. he ſays, The Pariſhioners or Inhabitants, or *Probi homines* of *Dale*, or the Churchwardens, are not capable to purchaſe Lands, but Goods they are, unleſs [50]it were in antient time, when ſuch Grants were allowed; here my Lord *Coke* ſays not one word that the Common Law is herein altered, but only that ſome kind of Grants were allowed then, which would not be allowed now, and this agrees with that f. 8. b. on the other ſide at the bottom, where he ſays, if it be an antient Grant, it muſt be expounded as the Law was taken at the time of the Grant, ſo alſo fol. 8. a. at the bottom of the page. He ſays of antient time the Heir was permitted to have an Action of Debt upon a Bond made to his Anceſtors and his Heirs, but the Law is not ſo holden at this day; ſo in that fol. 26. b. ſect. 29. But it hath been ſaid, that if a Man give Land to another, and to his Heirs of the Body of ſuch a Woman lawfully begotten; that this is no Eſtate Tail

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for the uncertainty by whom the Heirs ſhall be begotten, for that the Brother of the Donee or other Couſin, may have Iſſue by the Woman which may be Heir to the Donee, and Eſtates in Tail muſt be certain; therefore our Author, to make it plain in all his Caſes, added to theſe words (his heirs) which he ſhall In-
[Page 51.] gender. But that opinion is ſince our Author [51] wrote overrul'd, and that Eſtate judged to be an Eſtate Tail, and begotten ſhall be neceſſarily intended begotten by the Donee.

So that my Lord *Coke*, doth not in any of thoſe places ſay; that the Law is therein altered, but he all along avoids that expreſſion, and only tells us, that ſuch and ſuch Grants were allowed, the Law was ſo and ſo taken, and ſo and ſo holden, and ſuch and ſuch an opinion hath been over-rul'd, and accordingly all ſuch other like expreſſions of my Lord *Coke*, are thus to be underſtood; But withal it muſt be acknowledged (as was before expreſſed) that in thoſe particular Caſes, where the Law hath been holden otherwiſe, then it is holden now, that if it be an antient Grant, it muſt be expounded, as the Law was taken at the time of the ſaid Grant. And thus, as you may ſee *Coke upon Littleton*, fol. 21. b. in the Caſe of *Piers de Saltmarſh*, and others, it was judged in King *Edward the Third*'s time, and in King *Edward the Fourth*'s time, That a Man might give Land to his Son in Frank Marriage, but in King *Henry the Eigth*'s time it was holden otherwiſe, the former Books being not re-
[Page 52.] membred; but notwithſtand-[52]ing, that this Point was judged thus differently, the Law was ſtill the ſame, and all that can be ſaid is, that ſome of the Judges did not judge right, according to the Common Law; and indeed, if this Rule of Sir *Peter Leiceſter*'s was true, that becauſe the Judges in one Age did take the Common Law to be otherways, than it was taken in former Ages, that therefore the Common Law was changed: The Judges then could never do contrary to the Common Law; for when they had declared (though erroneouſly) that the Common Law ought to be otherwiſe taken, than it was formerly, the Common Law by Sir *Peter*'s Rule, would be thereupon changed, and what

they did, would ever be Legal, the abſurdity whereof every one may eaſily diſcern.

And indeed my Lord *Coke* is ſo far from being of opinion that the Common Law hath or can be changed, unleſs by Act of Parliament, that in the firſt Part of his *Inſtitutes*, fol. 115. b. he tells us, That whatſoever was at the Common Law, and is not ouſted or taken away by any Statute, remaineth ſtill. And a few lines lower he alſo ſays, The Common Law hath no Controler in any Part [53]of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament, it remains ſtill. [Page 53.]

6. Sixthly, It hath been objected, that in this very particular Caſe of Frank-Marriage the Law is different now from what it was in thoſe former Ages, and this hath been pretended to be proved by the words of *Glanvil*, who lived in the ſame Age with *Amicia* (and as Sir *Henry Spelman* tells us) was the firſt that reduced our Law into Writing; as alſo by the words of *Bracton*, who was the ſecond that did Write of our Engliſh Laws, and lived in the time of King *Henry the Third*, as alſo by Precedents of ſome Lands given to *Geva* the Wife of *Geffrey Riddel*, and Daughter of *Hugh Lupus*, and to *Joane* the Wife of *Lhewellin*, Prince of *North-wales*, and Daughter of King *John;* which Gifts of the ſaid Lands Sir *Peter Leiceſter* will have to be Gifts in Frank-Marriage, and alſo ſays that the ſaid *Geva*, and *Joane*, were both of them Baſtards:

And to make this out, Sir *Peter* in that Book of his, which he was pleaſed to call my *Law Caſes Miſtaken*, pag. 5 & 6. [54]names us ſeven ſeveral particulars, which he calls *Parcels of the Law in* Glanvil's *time and thoſe more antient Ages;* and Sir *Peter* ſays they are contrary to thoſe produced by me. But all theſe ſeven Parcels of Sir *Peter*'s Law, are eaſily anſwered; for neither *Glanvil*, nor any other Author that I can find, ever ſaid any word of the firſt ſix of them; and as to the ſeventh, though he there tells us that Earls and great Lords in thoſe former Ages, did often [Page 54.]

Join with their Mothers, who then had the Tuition of them in Deeds and Charters, whiles they were very young, yet, as will appear anon, I believe there will be but one ſingle Precedent found, in which any young Lord, who was under Age, Joined with his Mother, and did uſe her ſeal to any Charter or Deed; neither will that Caſe relate to this of *Amicia* in the leaſt degree. But let us take a view of thoſe words of *Glanvil*, lib. 7. c. 1. which Sir *Peter Leiceſter* doth ſo much relie upon as they are by him truly quoted in the ſeventh page of the ſecond of his two Books, which words are theſe:

[Page 55.] [55] *IN aliâ acceptione accipitur Dos ſecundum leges Romanas: ſecundum quas proprié appellatur Dos, id quod cum muliere datur viro: quod vulgariter dicitur Maritagium: Poteſt itàq; quilibet liber homo, terram habens, quandem partem terræ ſuæ cum filiâ ſuâ, vel cum aliquâ aliâ quâlibet muliere, dare in maritagium, ſive habuerit hæredem ſive non, vælit hæres vel non, imo & eo contradicente.*

Alſo lib. 7. cap. 18. *Maritagium, autem aliud nominatur liberum, aliud Servitio obnoxium: liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliquâ muliere alicui in maritagium, ità quod ab omni ſervitio terra illa ſit quieta, & a ſe & hæredibus ſuis, verſus capitalem Dominum acquietanda: & in hâc quidem libertate ita ſtabit terra illa uſque ad tertium hæredem: nec interim tenebuntur hæredes inde facere aliquod homagium: Poſt tertium verò hæredem, ad debitum ſervitium terra ipſa revertetur; & homagium inde capietur. Quia, ſi fuerit pars feodi militaris, pro quantitate terræ ſervitium feodi inde preſtabit.*

[Page 56.] [56] *Solet autem quandoq; terra aliqua dari in maritagio, Salvo & retento debito ſervitio ipſi Capitali Domino: & tunc quidem tenebuntur maritus mulieris ipſius: & hæredes ſui ſervitium id facere, ſed ſine homagio uſque ad tertium hæredem.*

And theſe are all the words of *Glanvil*, which Sir *Peter* doth any where Cite, which do relate to any Gifts made either in Free-Marriage, or in Marriage liable to Services.

And here let me obſerve, that whereas I have many times blamed Sir *Peter Leiceſter* for ſo often affirming that *Glanvil* ſaid that Lands might be given with any Woman in *liberum maritagium*, whereas *Glanvil* had ſaid no ſuch thing, that Sir *Peter* at the laſt, in the ſecond Page of that Reply, which he calls the *Second Reply*, ſays, *Though* Glanvil *hath not theſe very words —— Lands may be given with any Woman in* liberum Maritagium; yet he faith it by conſequence drawn clearly out of his words, lib. 7. cap. 18. which (Sir *Peter* ſays) is the ſame in effect. So that Sir *Peter* with much ado [57]doth acknowledge [Page 57.] that *Glanvil* hath not expreſly ſaid any ſuch thing, onely it ſeems he fancied, that the ſame may be by conſequence drawn out of *Glanvil*'s words; which how Sir *Peter* did prove I am now to enquire into. As for thoſe words which *Glanvil* hath, lib. 7. cap. 1. they cannot prove any ſuch thing; for thoſe words, *Poteſt itaque quilibet liber homo, terram habens, quandem partem terræ ſuæ cum filiâ ſua, vel cum aliquâ aliâ quâlibet muliere, dare in maritagium, ſive habuerit hæredem ſive non, velit hæres vel non, imo & eo contradicente.* Do only prove that a Man may give Lands with any Woman in *Maritagium*, and therefore *Maritagium* being two-fold, viz. *Maritagium liberum* and *Maritagium ſervitio obnoxium*, *Maritagium* being the *Genus*, doth comprehend both Free-Marriage, and Marriage liable to Services; ſo that if a Man can give Lands with any Woman in Marriage liable to Services, he may give Lands with any Woman in *Maritagium;* and there never was any doubt made, but that a Man may give Lands with any Woman whatſoever in Marriage liable to Services; But that upon which Sir *Peter* doth moſt princi-[58]pally rely, are [Page 58.] theſe words of *Glanvil*, lib. 7. cap. 18. *Maritagium, autem aliud nominatur liberum, aliud ſervitio obnoxium: liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat*

cum aliqua muliere alicui in Maritagium, ità quod ab omni ſervitio terra illa ſit quieta, & a ſe & hæredibus ſuis, verſus capitalem Dominum acquictanda.

For from thence, as you may ſee in the 54 page of the firſt of his two Books, which he calls his *Reply*, and again, at the bottom of the 29 page, and in the 30 page of the ſecond of his two Books, Sir *Peter Leiceſter* frames this Argument:

Glanvil there ſaith, that a Man may give Land with any Woman in Marriage, ſo that it be acquit from all Service *à ſe & hæredibus ſuis, verſus capitalem Dominum.*

But Land ſo given (ſaith *Glanvil*) *eſt liberum Maritagium.* Ergo *Glanvil* ſaith, Lands may be given with any Woman in *liberum Maritagium.*

[Page 59.] [59]To which I anſwer, That Sir *Peter Leiceſter* is the firſt Man, that ever, ſo far as I can find, went about to prove a Point of Law by a Syllogiſm; and in this new way of his he hath no good ſucceſs; for his major and minor Propoſitions are both of them untrue; for *Glanvil* neither ſays, That a Man may give part of his Land with any Woman in Marriage, ſo that it be acquit from all Service, *a ſe & hæredibus ſuis, verſus capitalem Dominum.* Neither doth *Glanvil* ſay, That Lands ſo given (*viz.* with any Woman) *eſt liberum Maritagium*, for *Glanvil* onely ſays, That *liberum Maritagium* is when a Man gives Lands *cum* * Note. **aliqua muliere alicui in Maritagium, ita quod ab omni ſervitio terra illa ſit quieta, & a ſe & hæredibus ſuis, verſus capitalem Dominum acquietanda;* that is, Free-Marriage * Note. is where a Man gives Lands with *ſome Woman (*viz.* one of his Kindred) in Marriage, ſo that it may be acquit from all Service, *&c.* and that Lands ſo given with ſome Woman *eſt liberum Maritagium*, but *Glanvil* doth not here, nor [Page 60.] any where elſe [60]ſay, that Lands may be given with any Woman

in *Maritagium*, ſo that it may be acquit from all Service, *&c.* for though Sir *Peter Leiceſter* doth here and many times elſewhere conſtrue theſe words (*cum aliqua muliere*) with any Woman, yet they are not Latine for *with any Woman*, but for, with ſome Woman, for *Aliquis* when alone without *Quilibet*, or ſome ſuch other like word, is Latine for ſome one, but not for any one, as you may ſee in Sir *Thomas Eliot*'s Bibliotheca or Library, Printed 1545. where he renders the word *Aliquis* thus; *Aliquis, Aliquæ, Aliquod*, Some. *Aliquis eſt*, he is a man of no ſmall reputation; So alſo in Mr. *Gouldman*'s Dictionary printed at *Cambridge*, 1674. *Aliquis vel Aliqui, Aliquæ vel Aliqua, Aliquod vel Aliquid; ex alius & quis:* τὶς ἔνιος, אחד. Somewhat, Something, Some Body, Some One, *Aliquis, ut Græcis*, τὶς, *Capitur pro homine non obſcuro. Ut fac ut me velis eſſe aliquem*, Cic. i. e. *non prorſus obſcurum, Aliquos viginti dies.* Plau. *i. e. circiter viginti dies.* Sic. Var. de re ruſt. *Aliqua folia quinque.* So alſo Dr. *Thomas Holyoke*, in that large Dictionary of his Printed at *London*, 1677. *Aliquis, vel qui, quæ, vel,* [61]*qua, quod, vel quid;* אחד achad, τὶς ἔνιος. Some Body, Some One, Somewhat, Something. *Aliquis ut Græcis* τὶς, *capitur pro homine non obſcuro: ut; fac, ut me velis eſſe aliquam*, Cic. *i. e. non prorſus, obſcurum.* ¶ *Aliquos viginti dies*, Plaut. Menæc. *i. e. circiter viginti dies*, &c. [Page 61.]

And ſo in *Thomas Thomaſius*, and in other Dictionaries; ſo that Sir *Peter* did run himſelf into very many errors, by his miſtaking of the aforeſaid words, *cum aliqua muliere:* for *Glanvill* is ſo far, from proving the Law in his time to be different in the point of *Frank Marriage* from what it is now, that he proves the Law to be the very ſame then in that particular, that it is now; For he ſayes, as appears before, *lib.* 7. *cap.* 1. that Lands may be given with any Woman whatſoever *in Maritagium*, which is yet true, for Lands may yet be given with any Woman whatſoever in Marriage liable to ſervices, and *lib.* 7. *cap.* 18. when he tells us what *Liberum Maritagium* is, he ſayes Lands may be ſo given

cum aliqua Mulicre, with ſome Woman (*viz.* with one of the Kindred) which alſo is true at this very day.

[Page 62.] [62]And hereupon my Lord *Coke*, who knew the Law much better than Sir *Peter Leiceſter*, did in the firſt Part of his *Inſtitutes*, or *Commentary upon Littleton*, fol. 21. b. (which is the very ſame ſide of the leaf where he tells us, that the Woman or Man that is the cauſe of the Gift in *Frank Marriage*, muſt be of the Blood of the Donor) cite in the Margent, *Glanvill lib.* 7. *cap.* 1. and *cap.* 18. which certainly he would never have done, if *Glanvill* inſtead of confirming, had directly contradicted what my Lord *Coke* had ſaid.

7. Seventhly, It hath been objected by Sir *Peter Leiceſter*, that *Bracton* (who lived in the Reign of King *Henry the Third*, and was the ſecond perſon who ſince the Conqueſt did write of our *Engliſh* Laws) doth ſay, that Lands might in his time be given in *Frank Marriage* with any Woman; and for that he citeth theſe words of *Bracton*, lib. 2. cap. 7. par. 3. *Et eſt maritagium aliquando liberum, ſcilicet ab omni ſervitio quietum; & aliquando ſervitio obligatum: liberum autem maritagium dicitur,*
[Page 63.] *ubi donator vult* [63]*quod terra, ſic data, quieta ſit & libera ab omni ſeculari ſervitio, quod ad Dominum feodi poſſit pertinere, & ita quod ille, cui ſic data fuerit, nullum omninò faciat inde ſervitium uſque ad tertium hæredem.*

And alſo theſe words of *Bracton*, lib. 2. cap. 7. par. 1. *Quoniam terra data Baſtardo in maritagium, ſicut & aliis, vel Baſtardo per ſe, in ſe tacitam habet conditionem vel expreſſam de reverſione* — &c.

To which I anſwer, that thoſe words of *Bracton, lib.* 2. *cap.* 7. *par.* 3. do only tell us what a Gift in *Frank Marriage* is, but there is not one word amongſt thoſe which Sir *Peter* doth there ſet down, which tells us with what kind of perſons, ſuch gifts are to be made. And thoſe other words, *lib.* 2. *cap.* 7. *par.* 1. do only

prove, that Lands may be given *Baſtardo in maritagium* (which they alſo may at this day) but there is not one word at all to prove, That Lands may be given to a Man *cum Baſtarda*, whereas in this Caſe of *Frank Marriage*, the Party with whom the Land is given, not the Party to whom the Land is given, is the principal thing that is conſiderable herein. And though Sir *Peter* [64]in the 11th Page of that Book of his, which he unjuſtly calls, *My Law-Caſes Miſtaken*, ſayes that this Anſwer of mine is very *ſuperficial and inſufficient; For neither the Party to whom, nor the Party with whom, is here principally conſiderable, but the Party who is the principal cauſe of the Donation;* yet the contrary will appear by *Bracton*'s own words, *lib.* 2. *cap.* 7. *par.* 1. which becauſe Sir *Peter* cuts off too ſhort, with an *&c.* I will here give you them more at large out of *Bracton* himſelf. [Page 64.]

QUoniam terra data Baſtardo in maritagium, ſicut & aliis, vel Baſtardo per ſe, in ſe tacitam habet conditionem vel expreſſam de reverſione: ideo videndum ſi terra data fuerit Baſtardo in maritagium cum aliqua muliere, aut datur ipſis & eorum hæredibus communibus, aut hæredibus ipſius uxoris tantum, in primo caſu revertetur ad donatorem, ſi defecerint hæredes communes, per modum tacitum donationis. Si autem ſit hæredibus uxoris, tunc ſi hæredes habuerit de Baſtardo, remanebit eorum hæredibus communibus terra, quia tales erunt hæredes uxoris, quamvis communes, ſi autem communes defecerint, tunc deſcendit terra ſic [65]*data aliis hæredibus ipſius uxoris de altero viro vel à latere venientibus.* [Page 65.]

From which words, it doth plainly appear, that in this caſe the Woman with whom the Land is given, is the principal thing that is conſiderable herein, and not the Baſtard to whom the Land is given; For he here only tells us, that when Land is given *Baſtardo in maritagium cum aliqua muliere*, that *aut datur ipſis & eorum hæredibus communibus, aut hæredibus ipſius uxoris tantum;* whereas if the Woman with whom the Land is given, had not been the principal thing, that is conſiderable in the ſaid

Gift, he would have ſaid, *Aut datur ipſis & eorum hæredibus communibus, aut hæredibus ipſius uxoris tantum, aut hæredibus ipſius Mariti tantum.* But he ſayes not one word of the Land coming to the Heirs of the Husband alone, though he tells you it may come to the Heirs of the Wife alone, which doth fully prove that which I do here affirm, *viz.* That the Party with whom the Land is given, is the principal thing that is conſiderable, and that therefore though Lands may be given *in liberum mari-*
[Page 66.] *tagium Baſtardo vel Baſtardæ*, yet they may [66]not be ſo given *cum Baſtardo vel cum Baſtarda.* Alſo *Bracton* is ſo far from proving that Land might have been given in his time in *Free Marriage* with any Woman whatſoever, that he proves, that ſuch Gifts could only be made with a Woman who was of the blood of the Donor, his words, *lib.* 2. *cap.* 7. *par.* 3. are theſe; *Et ſciendum quod terra datur aliquando ante ſponſalia & propter nuptias à patre mulieris vel alio parente ipſi marito cum muliere aliqua vel utrique ſimul, ſcilicet tali viro & uxori ſuæ (quod idem eſt) & eorum hæredibus vel alicui mulieri ad ſe maritandam, &c.* And preſently after, *Fit etiam talis donatio ante Matrimonium contractum, aliquando in ipſo contractu, aliquando poſt contractum.*

Which is as much as to ſay, That this kind of Gift can only be made by the Father, Mother, or ſome other Kinſman, (For the word *Parens* or *Parent* in Latine and French, hath oftentimes that ſignification; and we uſually ſay, when a Man is of the ſame kindred with ſuch a one, that he is of the ſame Parentage with him) And though Sir *Peter Leiceſter* ſay in the 47 page of
[Page 67.] the ſecond of his [67]two Books, that *here is not one word to prove what I alledge it for; but rather the contrary: For a Father, or other Parent, may give Lands with any Woman in expreſs terms, not to any of his Kindred only, no ſuch word at all.* In this Sir *Peter* doth again miſtake himſelf; For here he doth alſo falſly conſtrue the words, *cum muliere aliqua*, with any Woman; whereas I have before proved, they are not Latine for with any Woman, but for with ſome Woman. And beſides, *Bracton* here

expreſly ſpeaks of a Gift made by the Father of the Woman, or ſome other Parent, (that is, ſome other Kinſman) and if the Donor was Father or Couſin to the Woman, the Woman muſt of neceſſity be either Daughter or Couſin to the Donor. Alſo my Lord *Coke in his Inſtitutes upon Littleton*, Fol. 21. b. tells us, *That one of thoſe things incident to a Frank Marriage is, that the Woman or Man that is the cauſe of the Gift, be of the blood of the Donor*. And for this, as appears letter (*i*) he in the margent, cites *Bracton, lib. 2. cap. 7.* (which is this very place.) And can any Man think, that my Lord *Coke* would have cited that place, and the aforeſaid places in *Glanvill*, to have pro-[68]ved that the Woman or Man who was the cauſe of the Gift, muſt be of the blood of the Donor, if *Glanvill* and *Bracton* in thoſe places, had ſaid that ſuch Gifts might be made with thoſe who were not of the blood: Alſo to what purpoſe ſhould the Law have been changed by the Statute of *Weſtminſter* the ſecond, in this caſe of *Frank Marriage*, from what it was in ancient times, ſeeing ſince there were Eſtates in tail, there could be no great occaſion to make Gifts in *Free Marriages;* and therefore my Lord *Coke* ſays *in his firſt Part of Inſtitutes*, Fol. 178. b. *That ſuch Gifts are almoſt grown out of uſe, and ſerve now principally for Moot Caſes and Queſtions in the Law, that were thereupon wont to ariſe.* [Page 68.]

8. Eighthly, It hath been objected, That *Geva* was a baſe daughter of *Hugh Lupus*, and that ſhe had Lands given her in *Frank Marriage*, as doth appear by this following Deed.

RAnulfus Comes Ceſtriæ Willielmo Conſtabulario & Roberto Dapifero & omnibus Baronibus ſuis & hominibus Fran-[69]*cis & Anglicis totius Angliæ ſalutem. Sciatis me dediſſe & conceſſiſſe Gevæ Ridell filiæ Comitis Hughes Draytunam cum pertinentiis in libero conjugio, ſicuti Comes Hughes ei in libero conjugio dedit & conceſſit. Et teneat bene & in pace, honorifice, & liberè, ut melius & liberius tenuit tempore Hugonis Comitis & aliorum meorum anteceſſorum eiſdem conſuetudinibus & libertati-* [Page 69.]

bus. Teſtibus Gilberto filio Ricardi, & Adelizâ ſorore mea, & Willielmo Blundo, & Alexandro de Treſgor, & Rogero de Bellocampo, & Willielmo de Sais, & Roberto de Sais, & Ricardo filio Aluredi, & Hugone filio Osberti, & Henrico de Chalder: Apud Saintonam.

To which I anſwer firſt, That there is no proof at all, that the ſaid *Geva* was a Baſtard; And ſecondly, That the ſaid Gift was not a Gift in *Frank Marriage.*

Firſt, I ſay, there is no proof that the ſaid *Geva* was a Baſtard, neither doth any Author either ancient or modern call her ſo, except Sir *Peter Leiceſter* alone. And ſhe is by one very know-
[Page 70.] ing perſon expreſly ſaid to be a legitimate Child. In-[70]deed Sir *Peter* hath very often poſitively ſaid, that *Ordericus* did ſay ſhe was a Baſtard, but in his *Second Reply*, (which is the ſixth Treatiſe he did write concerning *Amicia*) after he had been many times told, that *Ordericus* had ſaid no ſuch thing, he is forced *page* 3. to confeſs, that *Ordericus* hath not theſe very words (*Geva is a Baſtard*) but yet he pretends, that by ſure conſequence it follows out of the words of *Ordericus*, that ſhe was a *Baſtard*, which (he ſays) is all one to effect; And to make this out, he cites *Ordericus lib.* 4. *Eccleſiaſticæ Hiſtoriæ*, Pag. 522. whoſe words are theſe, *E Pellicibus plurimam Sobolem utriuſque ſexûs genuit, quæ diverſis infortuniis abſorbta penè tota periit: Ermentrudem filiam Hugonis de Claromonte Beluacenſi uxorem duxit, ex quâ Ricardum Ceſtrenſis Comitatûs hæredem genuit, qui juvenis liberiſque Carens naufragio periit.* But becauſe thoſe words do not prove that *Geva* was one of thoſe *Baſtards* which *Hugh Lupus* had, he doth not ſo very much inſiſt upon them, as he doth upon what *Ordericus* doth write, *Lib.* 10. *Eccleſiaſt. Hiſt. pag.* 787. where *Ordericus* ſays thus, *Ricardus Pulcherrimus puer,*
[Page 71.] *quem ſolum ex Ermentrude* [71]*filiâ Hugonis de Claromonte genuit, Conſulatum (Ceſtriæ ſcilicet) tenuit;* For he ſays that theſe words of *Ordericus* do put it out of doubt, that Earl *Hugh* only begot

Richard on *Ermentrude* his Wife, and ſays that then by ſure conſequence out of thoſe words it muſt needs follow, that *Geva* was one of the Earl's *Baſtards*, ſhe being no Child by *Ermentrude* his Wife; But by thoſe words, *Richardus autem pulcherrimus puer quem ſolum ex Ermentrude filia Hugonis de Claromonte genuit; Ordericus* might as well mean, that hè was the onely Son which Earl *Hugh* had by *Ermentrude*, as that he was the onely Child that he had by her; For there is no neceſſity to take the word *ſolum* adverbially, neither is it marked as an Adverb in *Ordericus*'s Book, though it be ſo in Sir *Peter*'s, and yet in *Ordericus*'s Book, Adverbs are uſually marked. And though Sir *Peter Leiceſter* alledge, that *Ordericus* doth not ſay *quem ſolum filium*, as I interpret him, but indefinitely, *quem ſolum ex Ermentrude genuit;* and ſo, whether *ſolum* be underſtood adverbially, or whether it be taken for a noun, no more can be made of it in *Engliſh* than thus, *Richard* a beautiful Youth, whom only Earl *Hugh* begot [72]on *Ermentrude*, &c. and ſo, whether we Engliſh it, [Page 72.] whom only he begot, or whom he only begot, it retains the ſame ſenſe, and ſhews that no other perſon, either Son or Daughter, was begotten on *Ermentrude* by Earl *Hugh*. I muſt take leave to diſſent from him herein; For, I conceive this expreſſion of *quem ſolum genuit*, doth amount to as much as if he had ſaid *quem ſolum filium genuit;* which if it do, then (notwithſtanding the ſaid expreſſion) Earl *Hugh* might poſſibly have a Daughter or Daughters by the ſaid *Ermentrude;* For, to what Antecedent can the word *quem* ſo properly relate, as to the word *puer?* and if ſo, then *quem ſolum puerum*, is as much as *quem ſolum filium*, and ſo doth not exclude him from having a Daughter or Daughters by the ſaid *Ermentrude;* For, though the word *puer* be by ſome underſtood to ſignifie a Child of either Sex, as Sir *Peter Leiceſter* alſo ſeems to take it in his *Hiſtorical Antiquities*, pag. 113. & 114. (But miſprinted 121. & 122.) Yet Mr. *Gouldman* in his Dictionary will tell us that it is a miſtake, where on the word *puer* he thus writes, *Nonnullis habetur communis generis, ſed male, ex Ovidiano illo carmine, de Iphide puella in puerum mutata,*

[Page 73.] [73] *Dona puer ſolvit quæ fœmina voverat Iphis.*

And though Sir *Peter Leiceſter* ſays, that *Geva* could not be by any former Wife, becauſe Earl *Hugh* had never any other Wife; yet that is more than either Sir *Peter Leiceſter* or I know; for there were many things done in thoſe Ages which never came to our knowledges.

Neither is there any force in what Sir *Peter* doth alledge, that probably if *Hugh Lupus* had any more Legitimate Children by his Wife beſides Earl *Richard*, either Son or Daughter, that *Ordericus* would have recorded them as well as others, being indeed his uſual method through the whole courſe of his Hiſtory. For he could have no Legitimate Son but Earl *Richard*, unleſs he had another Wife beſides *Ermentrude* (*Ordericus* being expreſs therein) and poſſibly for ſome Reaſons he might have another Wife beſides *Ermentrude:* But whether *Geva* was by a firſt or ſecond Wife, I know no neceſſity to conclude that *Ordericus*
[Page 74.] ſhould Record her, I finding no ſuch [74] uſual method of his, as this which Sir *Peter* ſpeaks of: For he doth not (that I ſee) make it his buſineſs to Record what Wives or Children the Earls of *Cheſter*, and other great Men had, but onely ſpeaks of them occaſionally, and ſo he doth alſo of ſome of their Illegitimate Children; but if he made it his deſign to give an exact account of theſe things, he ought to reckon *Geva*, either amongſt the Lawful, Doubtful, or Illegitimate Children of *Hugh Lupus*.

And as to Sir *Peter*'s Objection, That if *Geva* had been Legitimate, her Iſſue ought to have ſucceeded into the Earldom of *Cheſter*, rather than *Randle de Meſchines* after the death of *Richard* Earl of *Cheſter;* That doth not neceſſarily follow, whetherſoever *Geva* was a lawful Daughter of *Hugh Lupus* by a former Wife, or that ſhe was his Daughter by his Wife *Ermentrude:* For if ſhe was his Daughter by a former Wife, ſhe would be but of the half Bloud to *Richard* Earl of *Cheſter*, and then

Randle de Meſchines would be Heir before her; But it ſeems to me, that *Randle de Meſchines* was not the next Heir to Earl *Richard;* for as [75]Mr. *Cambden* in his *Britannia*, in his Deſcription of *Cheſhire*, tells us, [which is alſo ſpoken of by Sir *Peter* in his *Hiſtorical Antiquities*, pag. 105.] King *William* commonly called *The Conqueror*, created *Hugh Lupus* Count Palatine of *Cheſter*, *Totumq; hunc comitatum tenendum ſibi, & hæredibus ita libere ad Gladium: ſicut ipſe Rex tenebat Angliam ad coronam, dedit; (hæc enim ſunt verba Donationis) qui ſtatim ſibi Barones ſubſtituit*, &c. ſo that this Earldom by the words of the ſaid Grant, being not tied up to the Heirs Males of the Body of the ſaid *Hugh Lupus*, nor to the Heirs of the Body of the ſaid *Hugh*, but to his Heirs in general, if *Randle de Meſchines* had been the next Heir to *Hugh Lupus*, the Earldom would have deſcended to the ſaid *Randle*, but that it did not do; for *James York* in his *Union of Honor*, pag. 105. ſays, That this *Randle* was made Earl by Grant of King *Henry the Firſt;* and Sir *Peter Leiceſter* in his *Hiſtorical Antiquities*, pag. 118. (for which he cited *Ordericus*, a contemporary Author, *pag.* 876.) tells us, that the ſaid *Randle* reſtored to King *Henry* all the Lands which he had by his Wife the Widow of *Roger* [76]*de Romara*, for the Earldom of *Cheſter;* which he did not need to have done, if he had been the next Heir; ſo that I cannot imagine any reaſon of this new Grant to *Randle de Meſchines*, unleſs *Geva* was a Legitimate Daughter; but if *Geva* was a Legitimate Daughter of *Hugh Lupus*, then there might a Caſe happen, which would make it neceſſary that whoever was Earl of *Cheſter*, muſt have a new Grant; for if Earl *Richard*, when he died left two Siſters, viz. *Geva* and another Siſter, the Earldom would be then at an end; for as you may ſee in *Vincent*'s *Correction of Brooke*, pag. 545. if an Earldom be conferred upon any perſon and his Heirs, if that perſon, or whoever elſe ſucceeds him doth die, leaving two or more Daughters, or two or more Siſters to be his Heirs, in this caſe the Earldom doth Eſcheate, and fall into the Kings hands, becauſe it could not be divided; for though Lands may, yet *Honor non poteſt*

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dividi; and how eaſily might *Geva* have a Siſter, who might die young preſently after the death of *Richard* Earl of *Cheſter*, without being taken notice of by our Authors, doth clearly ap-
[Page 77.] pear by the former Precedents [77]in the like Caſes; and if *Geva* and another Siſter of hers were both living when Earl *Richard* died, the Earldom would extinguiſh, and being once extinguiſhed, could not revive again, upon the death of the ſaid *Geva's* Siſter; And whereas it hath been objected by Sir *Peter Leiceſter* in the 39 page of his anſwer, That if *Geva* had been Legitimate, it is more than probable, ſhe would have looked after the obtaining of ſo great an Inheritance, yea, and obtained it too before *Randle;* Nay had ſhe been but of the half Blood, ſhe would by all probability have buzled hard for ſo great an Eſtate in thoſe Ages, before ſhe had loſt it. In this Sir *Peter* was miſtaken; for if ſhe had been but of the half Blood, I have before proved that any Kinſman or Kinſwoman, though never ſo remote, would have inherited Earl *Richard*'s Lands before the ſaid *Geva;* and if *Geva* was Legitimate and ſole Daughter to *Hugh Lupus* by his Wife *Ermentrude*, and conſequently only Siſter of the whole Blood to Earl *Richard*, yet it doth not neceſſarily follow, that ſhe would have had the Lands; for when
[Page 78.] *Randle Blundevill* died, [78]his Siſters of the whole Bloud, had not the Eſtate of the ſaid *Randle*, but *John Scot*, eldeſt Son to *Maude* the eldeſt Siſter of the ſaid *Randle*, was Earl of *Cheſter;* and when the ſaid *John Scot* died, leaving only Siſters to be his Heirs, none of the Husbands or Sons of any of the ſaid Siſters of the ſaid *John Scot*, was made Earl; and the ſaid King *Henry* III. alſo laid that fair Inheritance unto the Domaine of the Crown, and aſſigned other Revenues elſewhere to the ſaid Heirs. The words of Mr. *Cambden* in his *Britannia* in his Deſcription of *Cheſhire*, ſpeaking of *John Scot*, are theſe, *Qui cum itidem nulla ſuſcepta prole diem obiiſſet, Rex Henricus tertius tam lauto patrimonio, oculum adjiciens, Domanio Regio adſcripſit, Johanniſq; ſororibus alios alibi reditus aſſignavit; Ne (ut ipſe Rex dixit) tanta hæreditas inter colos diduceretur;* And as the Siſters of

the ſaid *Randle Blundevill* and the Siſters of the ſaid *John Scot*, though they did not inherit the Earldom, had ſome other Lands given them, and were well provided for, ſo *Geva* Siſter of Earl *Richard*, as you may ſee in Sir *William Dugdale*'s firſt Part of the *Baronage of* England, *pag.* 34. *b.* [79]had alſo Lands given unto her, and was married to *Geffrey Ridell*, who is there ſaid to be an eminent Man in thoſe days, *viz.* Juſtice of *England* under King *Henry the Firſt;* and it is certain that when Earl *Richard* died, his Lands did not deſcend to the next Heir; for if *Geva* was his next Heir, ſhe had them not; and if *Geva* was not his next Heir, then *Randle de Bricaſard*, by ſome called *Randle de Micenis* or *Randle Meſchines* was his next Heir, and though the ſaid *Randle de Meſchines* had the Lands of Earl *Richard*, Son of *Hugh Lupus*, yet they came not to him by deſcent; for as I have before ſhewed out of *Ordericus Vitalis*, and out of Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, the ſaid *Randle* reſtored to King *Henry the Firſt*, all the Land which he had by his Wife, the Widow of *Roger de Romara* for the Earldom of *Cheſter;* and it is alſo plain that the ſaid *Randle* did give Mony for the ſaid Earl *Richard*'s Lands; for it appears *Rot. Pip. de An.* 5 *Regis Steph. Rot.* 12. *M.* 1. *Linc.* that in the ſaid fifth year of King *Stephen*, *Ranulph* Earl of *Cheſter* (Son to the ſaid *Randle de Meſchines*) is certified to be indebted to the [80]King in a thouſand Pounds, *De debito patris ſui, pro terra Hugonis Comitis.* So that here is no Proof at all, that the ſaid *Geva* was an unlawful Child.

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But ſecondly, If there had been any Proof, that the ſaid *Geva* had been a Baſtard, yet it would have been nothing to the Caſe in hand, becauſe the ſaid Gift unto the ſaid *Geva* was not a Gift in Frank-Marriage; if we peruſe what my Lord *Coke upon Littleton* ſays, *fol.* 21. *b.* he will there tell us, that theſe words *In liberum Maritagium*, are ſuch words of Art, and ſo neceſſarily required as they cannot be expreſſed by words equipollent or amounting to as much. As if a man give Lands to another with his Daughter *in Connubio ſoluto ab omni ſervitio*, &c. yet there

paſſeth in this Caſe but an Eſtate for Life; for ſeeing that theſe words *In liberum Maritagium* create an Eſtate of Inheritance againſt the general Rule of Law, the Law requireth that they ſhould be legally purſued. And in this Deed to *Geva*, the words are not *in liberum Maritagium*, but *in libero Conjugio;* and ſo
[Page 81.] are but like the words *in connubio ſoluto ab om-*[81]*ni ſervitio*, which make but an Eſtate for life, and ſo might be paſſed either to a Baſtard, or any other perſon whatſoever. And if we look well on the Deed to *Geva*, it is worded as if it intended only an Eſtate for life, there being no mention of her Heirs, and running alſo in the Singular number, *Et teneat bene & in pace, &c. ut melius & liberius tenuit, &c.* Alſo if we obſerve my Lord *Coke upon Littleton*, a little before *fol.* 21. *b.* he will tell us, that four things are incident to a Frank-Marriage: The firſt whereof is, that it be given for conſideration of Marriage, either to a Man with a Woman, or as ſome have held, to a Woman with a Man, (and with this *Bracton*, lib. 2. cap. 7. doth accord.) And the fourth thing is, that the Donees ſhall hold freely of the Donor, till the fourth Degree be paſt (with which the old Treatiſe, called *Fleta*, lib. 3. cap. 11. doth agree) for both which Reaſons, this Gift cannot be a Gift in Frank-Marriage, becauſe what is here given, is given to *Geva* alone, and not to an Husband with her; there being here no Donees, but one Donee onely, and the Eſtate was not to con-
[Page 82.] tinue till the fourth [82]Degree was paſt, but was only an Eſtate intended for the life of *Geva*, as appears before; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditelegh* with his Daughter *Bertred*, was given in Free-Marriage, and their Heirs are mentioned in both the Deeds: It remains therefore clear, that the Deeds to *Geva* was not a Gift in Frank-Marriage, and is alſo very uncertain, whether *Geva* was a Baſtard, as Sir *Peter* doth ſuppoſe.

And though I believe the *Baſſets* did afterwards enjoy the ſame Lands, which in the aforeſaid Deed were given to *Geva*,

becauſe in *Monaſticon Anglicanum*, Par. 1. p. 439. and in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, p. 113. (but miſ-printed 121.) I find *Geffrey Rydel* and *Ralph Baſſet* called the Heirs of the ſaid *Geva;* as alſo that the ſaid *Drayton* was called *Drayton Baſſet*, yet I do not know how or by vertue of what Deed, they did enjoy the ſame; for if theſe perſons were the Heirs of her Body, and the aforeſaid Deed a Gift in Frank-Marriage, why did not Earl *Randle* confirm or grant [83]thoſe Lands to her [Page 83.] Heirs, as well as to her; and if they were not the Heirs of her Body, ſhe could not be a Baſtard; for as my Lord *Coke on Littleton*, fol. 3. b. tells us, a Baſtard can have no Heir but of his own Body.

And whereas Sir *Peter Leiceſter* in the 45 page of his Anſwer to the *Defence of Amicia* ſays, that though my Lord *Coke* ſay that by thoſe words *in connubio ſoluto ab omni ſervitio*, there paſſeth but an Eſtate for life, yet he ſaith not, that by thoſe words *in libero conjugio*, or by the words *in libero connubio*, that there paſſeth onely an Eſtate for life; in this Sir *Peter* was alſo miſtaken; for my Lord *Coke* poſitively ſays, that an Eſtate of Inheritance cannot be paſſed by a Gift in Free-Marriage by any other words but thoſe very words *in liberum Maritagium*, and that no equipollent words or words amounting to as much will ſerve the turn, as you may ſee *Coke upon Littleton*, *fol.* 21. *b.* And in that very place, he tells us the reaſon thereof, is, becauſe the words *in liberum Maritagium* create an Eſtate of Inheritance, againſt the general Rule of the Law, and therefore [84]the [Page 84.] Law requireth that they ſhould be legally purſued; and whereas S^r^ *Peter* alſo objects, that by this Rule, a Gift of Lands by the words in Frank-Marriage in an Engliſh Deed, and a Gift *de terres en Franke-Marriage*, in a French Deed, would be void Grants; in this Sir *Peter* did alſo miſtake; for the Latin words *in liberum Maritagium*, and the Engliſh words *in Frank-Marriage*, and the French words *en Frank-Marriage*, are the very ſame, although in different Languages; but the words *in libero*

connubio, or *in libero conjugio*, or *in Maritagio ſoluto ab omni ſervitio*, or the French words, *en Nopſage acquite de ſervices*, or the Engliſh words *in Wedlock free from all Services*, and all ſuch other like, are but equipollent words, and an Eſtate of Inheritance will not paſs thereby.

And whereas the ſaid Sir *Peter* being very deſirous if he could to prove, that anciently Lands might be given in *Free Marriage* in other words than the words *in Liberum Maritagium* tells us in the ſecond of his two Books, *pag.* 28. *&* 29. that *Dos* is called [Page 85.] *Maritagium* in Doomſday Book; and for that end he cites [85] *Coke upon Littleton*, fol. 31. And alſo ſayes that *Dos* is called *Maritagium* by *Glanvill*, lib. 7. cap. 1. And alſo tells us of a Deed made in the time of King *John*, tranſcribed in one of the *Couchir* Books of the *Dutchy Office* in *Grays-Inne* at *London*, Tom. 2. *Honor ſive ſoca de Bolingbroke*, num. 26. pag. 508. in which *Saher de Quency*, Earl of *Wincheſter*, gives to *Hawiſe*, Siſter to the Earl of *Cheſter*, and Wife of *Robert*, Son of the ſaid *Saher de Quency*, certain Lands *in liberum Donarium;* which word *Donarium*, Sir *Peter Leiceſter* ſayes is miſprinted for the word *Dotarium*, and thereupon ſayes that the words *in liberum Dotarium* in that Deed, are the ſame with the words *in liberum Maritagium;* I ſhall therefore, before I anſwer the ſame, give you the words of the ſaid Deed, as I find it in Sir *Peter*'s *Hiſtorical Antiquities*, pag. 133.

SAherus de Quency Comes Wintoniæ, omnibus Hominibus & Amicis ſuis, præſentibus & futuris, ſalutem. Sciatis, me conceſſiſſe & dediſſe & præſenti Chartâ meâ coufirmâſſe Roberto de [Page 86.] *Quency Filio meo* [86] *& Hæredi ad dandum in liberum Donarium Hawiſiæ Sorori Comitis Ceſtriæ, Uxori ejuſdem Roberti, Bucehebeiam & Granteſſet, & Bradeham, & Herdewich, cum omnibus earundem terrarum pertinentiis, pro centum Libratis terræ: Et ſi hæ prædictæ terræ non valeant per annum centum Libras, Ego in aliis terris meis de propriâ Hæreditate meâ in Anglia, ei tantum*

perficiam, quòd plenariè habeat centum Libratas terræ per viſum & conſiderationem legalium Militum hominum videlicet, Comitis Ceſtriæ & meorum. Et præterea dedi eidem Roberto Feoda duorum Militum, ſcilicet, Feodum Matthei Turpin in Winterſlawa in Wilteſhire, pro ſervitio Feodi unius Militis, ad dandum ſimul cum terris nominatis prædictæ Hawiſiæ Uxori ſuæ in liberum Donarium. Teſtibus his, Comite Davide, Willielmo Comite de Ferrars, Philippo de Orreby, Roberto de Baſingham, Ricardo de Lindeſcia, Willielmo de Grumpington, Henrico de Braibroc, Willielmo de Syelford, David Giffard, Willielmo Picot, Hugone & Thoma & Henrico Diſpenſariis, Waltero de Coventrey, Waltero Daivilla, & multis aliis.

[87]And now as you may ſee in the 29th *page*, of the 2[d] of his two Books, he ſays, That in his *Hiſtorical Antiquities*, the word *Donarium* was there miſprinted for the word *Dotarium;* whereas the word *Dotarium* is not in the ſaid Copy which he cites, as a knowing Friend of mine doth inform me, who, at my requeſt, did carefully examine the ſame in one of the *Couchir* Books in the *Dutchy Office* in *Grays-Inn;* but the word is *Donariun*, which probably the Tranſcriber did miſtake for *Douarium*, the *u* and *n* being anciently written alike, and the *v* conſonant not then uſed. But if the word had been *Dotarium*, it would not ſignifie *Marriage*, as he doth fancy, although *Dos* in Doomſday Book be called *Maritagium:* For *Dos* is twofold, and that *Dos* which is *Dotarium*, is the ſame with *Douarium*, which we in *Engliſh* call *Dower*, and is not that *Dos* which ſometimes is called *Maritagium:* For this ſee *Glanvil, lib.* 6. *cap.* 1. whoſe words are theſe, *Dos duobus modis dicitur, dos enim dicitur vulgariter, id quod aliquis liber homo dat ſponſæ ſuæ ad oſtium Eccleſiæ tempore deſponſationis ſuæ*, &c. And lib. 7. cap. 1. *In* [88]*alia enim acceptione, accipitur Dos ſecundum leges Romanas*, (which 3 laſt words, with ſome others, Sir *Peter* leaves out in the 8th *page* of the firſt of his two Books) *ſecundum quas proprie appellatur dos, id quod cum muliere datur viro, quod vulgariter*

[Page 87.] [Page 88.]

dicitur Maritagium; Now that *Dotarium*, is that *Dos* which is *Dower*, and not that *Dos* which is called *Maritagium*, you may ſee in Sir *Henry Spelman*'s *Gloſſary*, Printed at *London* 1664. page 174. whoſe words are theſe:

¶ *De eo Dotis genere, quod uxoribus conſtituunt Angli.*

¶ *Doarium, Dodarium, Dotarium, Douarium, Dotalitium.*] *Omnia recte interpretatur vernaculum noſtrum Douer, non Latinum dos. Eſt enim proprie dos, illud quod maritus accipit cum uxore hæc vero id quod in remunerationem dotis, reportat uxor.*

And Sir *Peter* did very well know, that what is given in the aforeſaid Deed, was only given as a Dower or Jointure, and not as a Gift in *Free Marriage*, as you may ſee in the 132 *page* of his *Hiſtorical Antiquities*, where he thus writes:

[Page 89.] [89]*Hawiſe*, fourth Daughter of Earl *Hugh* by *Bertred*, married *Robert Quency*, Son and Heir of *Saher de Quency*, Earl of *Wincheſter*. She had the Earldom of *Lincoln*, to wit, the Caſtle and Honor of *Bolingbroke*, and all the Lands of Earl *Randle* in *Lindſey* and *Holland* in *Lincolnſhire*, for which ſhe gave 50 l. for Relief.

* Note. On *Hawiſe* was eſtated for *Jointure, *Bukby*, *Granteſſet*, *Bradeham*, and *Herdwick*, as appears by this Deed in the Couchir Book of the *Dutchy* Office. *Tom.* 2. *Honor ſive Soca de Bolingbroke;* num. 26. pag. 508.

So that you ſee Sir *Peter* hath formerly confeſſed, that this Gift *in liberum Donarium*, was only a Jointure ſetled on the ſaid *Hawiſe;* and it could not be a Gift *in liberum Maritagium*, becauſe *Saher de Quincy* doth not give the Lands there mentioned, unto *Hawiſe* the Wife of his Son *Robert* (as Sir *Peter* ſays he did) but he gives them to his Son *Robert ad dandum Hawiſiæ uxori ejuſdem Roberti.* And though a Man may ſettle Lands in
[Page 90.] Joynture upon his Wife, yet he cannot [90]give Lands unto her in Free-Marriage, for that would be to give Lands unto himſelf;

and whereas Sir *Peter* in the 26 and 27 *pages* of the ſecond of his two Books, tells us, that the words *in liberum Maritagium*, in the more ancient Ages, were not by Law ſo ſtrictly required, and ſayes this is clear out of *Glanvil*, lib. 7. cap. 18. where he tells us, That a Grant of Land with any Woman *in Maritagio*, *Habendum prædictam terram ſibi & hæredibus liberam & quietam ab omni ſervitio, à ſe & hæredibus ſuis, versùs capitalem Dominum;* This was a good Grant *in libero Maritagio*, and was as good as if the words had been *in libero Maritagio:* and therefore the words of my Lord *Cook* touching *liberum Maritagium* reach not the age of *Glanvill*, ſo as alwayes then to be tyed up to thoſe very words, and no other. Sir *Peter* therein fathers upon Mr. *Glanvill* what he never ſaid or meant; for Mr. *Glanvill* doth not ſay that Lands might be given with a Woman in *Frank Marriage*, by other words than the words *in liberum Maritagium;* neither doth Sir *Peter* ſay right, when he affirms that Mr. *Glanvill* ſayes, That a Grant of Land may be given with any Woman *in Maritagio*, [91] *Habendum prædictam terram ſibi & hæredibus liberam & quietam ab omni ſervitio, à ſe & hæredibus ſuis, verſus capitalem Dominum;* For Mr. *Glanvill* only tells us, That *liberum dicitur Maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliquâ Muliere* (that is, not with any Woman, but with ſome Woman, *viz.* one of the Kindred) *alicui in Maritagium, ita quod ab omni ſervitio terra illa ſit quieta, & à ſe & hæredibus ſuis, verſus capitalem Dominum acquietanda: & in hac quidem libertate ita ſtabit terra illa uſque ad tertium hæredem: nec interim tenebuntur hæredes inde facere aliquod homagium: Poſt tertium verò hæredem, ad debitum ſervitium terra ipſa revertetur; & homagium inde capietur.* All which hath been proved to be Law at this day, as well as it was in *Glanvil*'s time. [Page 91.]

IX. Ninthly, It hath been objected by Sir *Peter*, that *Joan* the Wife of *Lhewellyn ap Jorwerth*, Prince of *Northwales*, was baſe Daughter of *John* King of *England*, and that there are

ſeveral Precedents, that Lands were given to the ſaid *Joan* in *Frank Marriage.*

[Page 92.] [92]To which I Anſwer:

Firſt, That it is not abſolutely certain that the ſaid *Joane* was a Baſtard.

And ſecondly, That thoſe Precedents which are alledged by Sir *Peter*, of Lands given in *Frank Marriage* to the ſaid *Joane* are not any of them Gifts in *Frank Marriage*, and therefore will not at all work any thing in the caſe in hand.

1. Firſt let us examine whether it be certain, that the ſaid *Joane* was a Baſtard or not; and in order thereunto, let us obſerve how many Wives the ſaid King *John* had. Firſt, he married *Alais* Daughter of the Earl of *Moriana*, in the year 1173. as we may read in *Brompton*'s *Chronicon*, col. 1082. n. 35. *Hoveden* (*Frankfurt* Edition printed 1601.) pag. 532. n. 5. *Matt. Paris* (put out by Dr. *Watts*) pag. 127. n. 5. (which Editions of *Hoveden* and *Paris*, I do all along follow) and the like we may find in *Vincent upon Brooke*, pag. 133. who alſo there tells us, that
[Page 93.] by *Moriana* is not meant *Moreton*, but *Savoy*, with which [93]*Matt. Par.* p. 751. n. 46. doth alſo accord; but the ſaid *Alais* being then ſcarcely ſeven years of age, as we may ſee in *Matt. Par.* p. 127. n. 6. and dying preſently after, the ſaid King *John* could not poſſibly have any Iſſue by that Wife.

Soon after this, *viz.* in the year 1176. (as you may read in *Hoveden*, p. 553. n. 46. and *Matt. Paris*, p. 132. n. 29.) there was an Agreement for a Marriage to be had between the ſaid *John* (then youngeſt Son of the ſaid King *Henry* II.) and a Daughter of *William* Earl of *Gloceſter*, Son of *Robert* Earl of *Gloceſter*; which ſaid Daughter is not there named, but her name was *Ha-*

wifia or *Avis*, and the Marriage afterwards took effect, but he was divorced from her in the year 1200. as will anon appear.

Thirdly, Immediately upon his Divorce he married *Ifabel* Daughter of the Earl of *Engolifme*, who was his laft Wife; for fhe furvived him, and by her he had Iffue (as will be agreed by all) *Henry* (afterwards King *Henry the Third*) *Richard* Earl of *Cornwal*, afterwards King [94] of the *Romans*) *Joane* Wife of *Alexander the Second* King of *Scots*, *Eleanor*, firft married to *William Marfhall* the younger, Earl of *Pembroke*, and afterwards to *Simon Mountford*, Earl of *Leicefter*, as alfo *Ifabel*, who was fixth Wife to *Frederick the Second*, Emperor of *Germany*. [Page 94.]

But King *John* marrying the faid *Ifabel* in the year 1200. could have no child by her old enough to be married to the faid *Lhewellin* in the year 1204.

The only queftion then will be, whether *Lhewellins* Wife was King *John*'s Legitimate Daughter by his Wife *Hawifia*, for that fhe muft be if fhe was Legitimate; and the Marriage between the faid *John* and *Hawifia* being agreed on, in the year 1176, the faid *Hawifia* might very well have a Daughter old enough to be married to the faid *Lhewellin*, in the year 1204.

To prove that the faid *Joane* Wife of *Lhewellin* was a Baftard, Sir *Peter Leicefter* in the 101 page of that Book, which he calls the *Cafe of* Amicia *truly Stated*, [95] cites thefe feveral Authorities. [Page 95.] *Vincent upon Brook*, p. 204. *Speed*'s Hiftory, p. 518. *Stow*'s *Annals Augmented by* How's, p. 167, 168. *Policronicon* Tranflated into Engliſh by *Trevifa*, lib. 7. cap. 33. *Cambden*'s *Britannia in Shropfhire*, p. 453. alfo *Daniel and Fabian*, and *Mill*'s *Catalogue of Honour*, and Sir *Richard Baker*'s Hiftory, who do all call her Bafe Daughter of King *John;* and no Author at all calls her lawful Daughter, or reckoneth her among the Daughters of any

of his Wives: ſome of them ſay ſhe was begot by King *John* on *Agatha de Ferrars.*

To which I anſwer firſt, that I believe it doth not yet certainly appear, by any Deed, Record, or Contemporary Author, that the ſaid *Joane* was a Baſtard, and by conſequence, there is no abſolute proof that ſhe was Illegitimate; for the Author of the *Polycronicon* is the firſt of thoſe Authors which Sir *Peter* doth mention, or I have taken notice of, who doth call the ſaid *Joane* a Baſtard, and the ſaid Author of the *Polycronicon* (as *Voſſius* tells us in his Book, *de Hiſtoricis Latinis, pag.* 487.) dyed in the year 1363. which [96]was 159 years after the ſaid *Lhewellin* married the ſaid *Joane.* But all thoſe Records, Deeds, and ancient Authors, which I have ſeen do call her Daughter onely, without any Brand of Baſtardy at all; For this, ſee the Copy of King *John*'s Precept to the Sheriff of *Shropſhire*, to make Livery of the ſaid Lordſhip of *Elleſmere.*

[Page 96.]

Ex. Rot. Clauſo de anno ſexto Regis Johannis (in arce Lond.) membrana 7.

REX *Vicecom. Salop. Salutem. Scias quod dedimus dilecto filio noſtro Lewellino manerium de Elleſmere, cum omnibus pertinentiis ſuis, in Maritagio filiæ noſtræ, Et ideo, &c. Teſte, &c. apud Wigorn.* 23 *Martii.* So alſo.

Clauſ. 2. *H.* 3. *M.* 1.

MAndatum eſt *Vic. War. quod plenam ſeiſinam habere faciat Leolino Principi Norwall. de Villa de Budiford cum pertinentiis ſuis quam Dominus Johannes Rex pater Domini Henrici Regis dedit ei in Maritagium cum Johanna ſorore Henrici Regis uxore ipſius Leulini. Teſt. *Comite apud Weſtm.* 10. *Oct.*

* Scilicet Willielmo Mareſcallo Comite Pembrochiæ tunc Rectore Regis & Regni.

So alſo.

97 *Ex Rotulo Chartarum de anno ſexto Regis Johannis, numero* 32. [Page 97.]

Charta Lewellini Principis Walliæ.

JOhannes Dei gratia, &c. Sciatis, nos dediſſe, conceſſiſſe, & hac Charta noſtra confirmaſſe, Lewellino Principi Northwalliæ, in Maritagium cum Johanna filia noſtra Caſtrum de Elleſmara cum omnibus pertinentiis ſuis:

So alſo *Matt. Paris,* who was contemporary with the ſaid *Joane,* p. 231. n. 52. calls her the *Kings daughter,* without the addition of *Baſtard,* or any thing tending thereto; his words are theſe, *Quo facto, venit alius nuncius ex parte filiæ ejuſdem Regis uxoris videlicet Leolini Regis Walliæ, &c.* Alſo in the Reign of King *Henry* III. her Son *David* is by him (p. 537. 569. and in many other places) ſtiled *Nepos Regis,* and p. 695. called *Nepos Regis ex Sorore;* and p. 570. he is ſaid to be *propinquus Regi conſanguinitate.*

98 Alſo *Knighton,* col. 2417. n. 42. thus ſayes of her, *Rex Johannes dedit filiam ſuam Leolino Principi Walliæ in uxorem, & cum ea dedit caſtellum & totum territorium de Elleſmere in confinio Walliæ.* And the King himſelf in the aforeſaid Record gives her the title of *filiæ noſtræ.* [Page 98.]

Alſo in *lib. Barlings* (in which Book, beſides what concerns the Abby of *Barlings* in *Lincolnſhire,* there are certain Annals (beginning *An.* 1050. and ending *An.* 1231.) ſhe is called the ſaid Kings daughter, without the addition of *Baſtard;* there being theſe words onely in the ſaid Book in Sir *John Cotton*'s Library,

which do concern the ſaid *Joane*, viz. *Lewelinus diſponſavit filiam Regis I.*

So alſo *Vaughan* in his *Britiſh Antiquities*, (as he is cited by Sir *Peter Leiceſter*, in the firſt of his two Books, *pag.* 28. & 29.) gives us out of an old Manuſcript theſe very words:

[Page 99.] 99 *Lewellinus Gervaſii filius Princeps Walliæ, primò deſponſavit Tanglwyſt, filiam Lhowarch Vychan de qua genuit Griffith & Gwlades ddu, quondam uxorem Radulphi de Mortuo mari: Poſt mortem dictæ Tanglwyſt, idem Lewelynus deſponſavit Johannam, filiam Johannis Regis Angliæ, de qua genuit David, principem; & Guelliant uxorem Johannis Lacy Comitis Lincolniæ, & Angharad primo deſponſatam Johanni de Brewis Domino de Brechon; poſt cujus deceſſum, deſponſata fuit Malgoni Vachan ap Maelgon ap Rees, & ex eadem uxore genuit filiam quæ maritata eſt Johanni Scotico, Comiti Ceſtriæ, qui fuit nepos Ranulphi Comitis Ceſtriæ ex parte ſororis ſuæ.*

So that we ſee in all theſe Records, Deeds and old Authors, there is not one word tending to prove that the ſaid *Joane* was an illegitimate Child.

Alſo our later Authors, as *Vincent* and others, who ſay that ſhe was Illegitimate, do many of them ſay, That King *John* was divorced from his ſecond Wife, as well for that ſhe was barren, [Page 100.] as within 100 the degrees of Conſanguinity; which barrenneſs, if it could be made to appear, would certainly prove the ſaid *Joane* to be a *Baſtard;* And this opinion hath ſo far prevailed in this laſt Age, that whereas learned Mr. *Cambden*, as we may ſee in his *Britannia* in Latine printed at *London* 1607. p. 259. ſpeaking of the divorce of the ſaid *Hawiſia* (whoſe name he miſtakes, and calls *Iſabel*) doth only uſe theſe words, *illam repudiatam*, Doctor *Philemon Holland* in the Engliſh Tranſlation (unjuſtly) renders

it thus, That King *John* did repudiate her upon pretences, as well that ſhe was barren, as that they were within the prohibited degrees of Conſanguinity. But our ancient Hiſtorians ſay nothing of her being barren. For this ſee *Hoveden* (who was living all the time that *Hawiſia* was Wife to King *John*) p. 803. n. 34. in the year 1200.

EOdem Anno factum eſt divortium inter Johannem Regem Angliæ & Hawiſam uxorem ſuam filiam Willielmi Comitis Glouceſtriæ per Heliam Burdegalenſem Archiepiſcopum, & per Willielmum Pictavenſem, & per Henricum Sanctonenſem Epiſcopos: erant enim affines in tertio [101] *gradu conſanguinitatis. Facto itaque* [Page 101.] *Divortio inter Johannem Regem Angliæ, & uxorem ſuam, ipſe Rex Angliæ conſilio Domini ſui Philippi Regis Franciæ duxit ſibi in uxorem Iſabel filiam Ailmari Comitis de Engoliſmo, &c.*

So alſo *Matt. Paris* (living in the time of the ſaid *Joane*) p. 200. n. 23. in the ſaid year 1200.

EOdem tempore celebrato Divortio inter Regem Anglorum & uxorem ſuam Hawiſam Comitis Gloverniæ filiam; eo quod affines erant in tertio gradu conſanguinitatis; Duxit idem Rex, conſilio Regis Francorum Iſabel filiam Comitis Engoliſmi.

So alſo *Mat. Weſtminſter* in that Edition printed at *London*, 1570. lib. 2. p. 76. n. 25.

ANno gratiæ. M. CC. Rex Johannes Iſabellam filiam Comitis Engoliſmi duxit in uxorem, & dominica proxima ante feſtum ſancti Dyoniſii conſecrata eſt in Reginam ab Huberto Cantuarienſi Archiepiſcopo, quia celebratum fuit divortium inter ipſum & Hawiſiam, Comitis Gloverniæ fili-[102] *am, eò quod contingebant ſe* [Page 102.] *in tertio conſanguinitatus gradu.*

See alſo the words of *Rad. de Diceto*, (who lived in the time of the ſaid King *John*) col. 706. n. 5. which words are theſe:

CElebratum eſt divortium inter Johannem Regem Angliæ & filiam Comitis Gloceſtriæ in Normannia, ab Epiſcopis Liſorienſi, Baiocenſi, Abrincenſi, & aliis Epiſcopis qui interfuerant, quam ipſe tempore patris permiſſione Romanæ Eccleſiæ duxerat in uxorem cum Comitatibus de Gloceſtria, de Sumerſatum, de Devenesire, de Cornwaille, & aliis quamplurimis per Angliam honoribus. Set ille ſublimioris thori ſpe raptatus, conſilio pravorum eam abegit, unde magnam ſummi Pontificis, ſcilicet Innocentii tertii, & totius curiæ Romanæ indignationem incurrit, præſumens temere contra leges & canones diſſolvere quod eorum fuerat auctoritate colligatum.

[Page 103.] See alſo *Lipſius* in his *Monita & exempla politica*, printed at *Amſterdam* 1630. p. 220. who there tells us, that *ſterilitas* [103] *ſola eſt cauſa divortii, quoties apud principes valuit*, and then judge if ſhe had been barren, whether that would not have been alledged as a cauſe of King *Johns* putting her away, as well as his deſire of matching into a more ſublime Family; And (which is very obſervable, all thoſe Authors which Sir *Peter Leiceſter* cites in the ſaid 101 Page, or who I have met with, who do either ſay that King *Johns* ſaid Wife was barren, or do call the ſaid *Joane* the Wife of the ſaid *Lhewellin* a *Baſtard*, do not any one of them (except Sir *Richard Baker*) know the true Chriſtian Name of the ſaid divorced Wife of the ſaid King *John*, but are either ſilent therein, or elſe (which almoſt all of them do) do call her *Iſabell* inſtead of *Hawiſia;* and how are thoſe perſons like to know whether ſhe had Iſſue or not, ſeeing they did not ſo much as know her true Chriſtian Name? Alſo Mr. *Vincent* in his corrections upon *Brooke*, pag. 204. cites a Deed of which Sir *Peter Leiceſter* in his Advertiſement to the Reader, *pag.* 60. gives us theſe words, and no more.

[104] *Chartæ* 14. *Hen.* 3. *membrana* 5. [Page 104.]

Pro Roberto de Audley.

Henricus Rex ſalutem. Inſpeximus Chartam Richardi de Landa in hæc verba.

Sciant præſentes & futuri, quod ego Richardus de Landa dedi & conceſſi & hac præſenti Charta mea confirmavi Roberto de Audley & hæredibus ſuis in liberum maritagium cum Johanna filia mea centum & tres ſolidatas & quatuor denaratas terræ cum Pertinentiis in Inſula Scapeya. Hiis Teſtibus, &c.

But Sir *Peter Leiceſter* omits a great part of the ſaid Deed, and amongſt the reſt theſe words, *Sicut carta Regis Johannis quam inde habeo rationabiliter Teſtatur*, which words do ſhew that King *John* gave thoſe ſaid Lands to the ſaid *Richard de Landa.*

[105] Now though this Deed doth prove that *Joane* the Wife of *Robert de Audley* was by the Law of *England*, the Daughter of *Richard de Landa*, yet Mr. *Vincent* in the ſaid 204 page of his *Corrections upon Brooke*, (being that very page in which he cites the ſaid Deed) tells us that this *Joane*, the Wife of *Robert de Audley*, was really the Baſe Daughter of King *John*, begotten on his Paramour *Agatha* the Daughter to *William de Ferrars*, the ſecond Earl *Ferrars* of that Chriſtian Name, as he ſays ſhall be more largely diſcovered in the Life of King *John;* which if ſo, the ſaid *Agatha* was then the Wife of the ſaid *Richard de Landa.* And that Kings did ſometime beget Children on the Bodies of other Mens Wives, which yet were owned as the baſe Children of the ſaid Kings is not without Precedent; for (to inſtance in no more) you may find in Sir *Richard Baker*'s Chronicle, printed at *London*, 1665. pag. 66. That King *Henry the Second*, by his famous Concubine the Wife of *Ralph Blewet*, a [Page 105.]

Knight, had a Son named *Morgan*, who was Provoſt of *Beverley*, and being to be elected Biſhop of *Durham*, went to *Rome* for
[Page 106.] a [106]Diſpenſation, becauſe being a Baſtard, he was elſe uncapable: But the Pope refuſing to grant it, unleſs he would paſs as the Son of *Blewet*, he abſolutely anſwered, he would for no cauſe in the World deny his Father, and choſe rather to loſe the Dignity of the Place, than of his Bloud, as being the Son, though but the baſe Son of a King. But the ſaid Mr. *Vincent* miſtakes this *Joane*, Wife of *Robert de Audley*, to be the ſame *Joane* who was Wife of *Lhewellin* Prince of *Wales;* for he ſays that after the death of *Lhewellin*, ſhe was re-married to *Robert de Audley*, which cannot be, becauſe as appears before, *Lhewellin* was Husband to his Wife *Joane* in the year 1204. and as you may find in the *Welſh* Hiſtory, put out by Dr. *Powell*, pag. 293. The ſaid *Joane* Daughter to King *John*, and Princeſs of *Wales*, died in the Spring, 1237. and was buried upon the Sea-ſhoar, within the Iſle of *Angleſey*, at *Lhanvaes*, as her pleaſure was, where the Prince did build a Houſe of *Bare-foot Fryers*, over her Grave; But the ſaid *Lhewellin*, as you may ſee in the ſaid *Welſh* Hiſtory, pag. 298. and in Sir-*Peter Leiceſter*'s *Hiſtorical Antiquities*, pag.
[Page 107.] 47. [107]and in *Matt. Paris*, put out by Dr. *Watts*, pag. 525. died *tertio Idus Aprilis, ſcilicet die ſancti Guthlaci, Anno Chriſti*, 1240. ſo that he outlived his ſaid Wife *Joane* three years; and therefore the ſaid *Joane de Audley* could not be that *Joane* who was Wife of the ſaid *Lhewellin*, but muſt of neceſſity be another *Joane*. And why might not other Writers miſtake this *Joane* Wife of *Robert de Audley*, to be the ſame *Joane* who was Wife of *Lhewellin*, as well as Mr. *Vincent* did; and thereupon call *Joane* the Wife of *Lhewellin* a Baſtard. But though Mr. *Vincent* do here promiſe to diſcover more fully in the Life of King *John*, that *Joane* the Wife of *Robert de Audley* was the Daughter of King *John*, by the ſaid *Agatha de Ferrars*, yet becauſe the ſaid Mr. *Vincent* did not (that I can find) live to write the Life of the ſaid King *John*, ſo that I cannot learn what Arguments he would have brought for the further diſcovery of what he did undertake;

I will therefore for the preſent wave the ſame, and not conclude that ſhe was Legitimate, although ſhe might be ſo, for any thing that doth yet to the contrary appear.

[108]Secondly, Sir *Peter Leiceſter* objects that *Lhewellin* gave with *Hellen* his Daughter unto *John Scot*, Earl of *Cheſter*, the Mannor of *Budeford* in *Warwickſhire*, and the Mannor of *Suttehel* in *Worceſterſhire*, *In libero Maritagio cum omnibus pertinentiis ſicut Dominus Johannes Rex ea illi dedit in libero Maritagio*, and therefore ſays, that nothing can be more clear than that the Gift of *Budeford* and *Suttehel* with the ſaid *Joane* Wife of *Lhewellin*, was an expreſs Gift in Frank-Marriage. And for the proving of this, he gives us this Agreement or Deed, which he ſuppoſeth to be made about *Anno Domini* 1222. 6 *H.* 3. [Page 108.]

Hæc eſt conventio facta inter Dominum Ranulfum Comitem Ceſtriæ & Lincolniæ, & Dominum Lhewellinum Principem Northwalliæ; Quod Johannes de Scotiâ, nepos prædicti Comitis de ſorore ſuâ primogenita, ducet in uxorem Helenam filiam ipſius Lhewellini: ita quod dictus Lhewellinus dabit dicto Johanni in libero Maritagio totum manerium de Budeford in Warewicâ, & manerium de Suttehele in [109]*Comitatu Wigorniæ cum omnibus pertinentiis, ſicut Dominus Johannes rex ea illi dedit in libero maritagio: Et totum manerium de Welneton in Comitatu Salopesburiæ cum omnibus pertinentiis infrà villam & extrà. Habendum dicto Johanni, & hæredibus ſuis ex dictâ Helenâ provenientibus, ſicut idem Lhewellinus ea aliquo tempore melius & integrius tenuit. Et preterea dabit eidem Johanni mille marcas Argenti, &c. Teſtibus Domino Reverendo Epiſcopo de ſancto Aſaph, Domino H. Abbate Ceſtriæ, Domino Hugone de Laſci Comite Ultoniæ, Phillippo de Orreby tunc Juſticiario Ceſtriæ, H. de Aldideley, Gualtero de Daivill, Ricardo Fitton, Edrevet Liagham, Edmundo filio Righerit. Coronon filio Edrevet, Helin Idhit, Magiſtro Eſtruit, Magiſtro Adâ, Davide Clerico Lhewellini, Magiſtro H. & ——— Clericis Domini Comitis Ceſtriæ & multis aliis.* [Page 109.]

To which I anſwer, that as it is not certain that the ſaid *Joane* was a Baſtard, ſo this Deed is only an Agreement, in the nature of Articles betwixt *Randle* Earl of *Cheſter*, and *Lincolne* on the
[Page 110.] one part, and *Lhewellin* Prince of *North-Wales* on [110]the other part; concerning an intended Marriage betwixt the ſaid *John* and *Hellen*, for they were not then married, as appears by the ſaid Articles or Deed; and the ſaid *Lhewellin* doth not thereby give to the ſaid *John Scot*, *Budeford* and *Suttehel*, but only Covenants that he will give them unto him, as appears by the word *Dabit*, which is the future Tenſe; and it is very likely that the ſaid *Budeford* and *Suttehel* were given to the ſaid *Lhewellin*, *in Maritagio*, without the word *libero*, as will be proved by theſe Records.

Clauſ. 2. *H.* 3. *M.* 1.

MAndatum eſt Vic. War. quod plenam ſeiſinam habere faciat Leolino Principi Norwall. de villa de Budeford cum pertinentiis ſuis quam Dominus Johannes rex pater Domini Henrici Regis dedit ei in Maritagium cum Johanna ſorore Henrici Regis uxore ipſius Leulini. Teſt. (*) *Comite apud Weſtm.* 10. *octo.*

[Page 111.] [111]*Rot. Pip. de ann.* 2 H. 3. *Warr. & Leic.*

Willielmus de Cantilupo Philippus de Kinton pro eo reddit comp. de cxxviii *l.* ii *s. bl. de firma de Warewick: & de quater viginti & quinque libris* xvi *s.* iiii *d. bl. firma de Leiceſterſhire.*

——— *Et Leuelino Principi Norwall:* lxxvi *s. in Budiford in Maritagio cum Johanna uxore ſua, de dimidio anno per Breve Regis.*

And as there are in theſe Records the words *in Maritagio*, without the word *libero*, ſo alſo there was *livery* made of the ſame Lands, which in a Gift in Frank-Marriage is needleſs to be done;

(*) *Scilicet Willielmo Mareſcallo Comite Pembrochiæ tunc Rectore Regis & Regni.*

but be it how it will, there can be no Argument drawn from this Deed or Agreement betwixt Earl *Randle* and *Lhewellin;* for it is very apparent, that he who did write the ſaid Deed or Agreement was a very ignorant Perſon, and did not at all underſtand what a Gift in Frank-Marriage was; for if King *John* gave *Budeford* and *Suttehel* to the ſaid *Lhewellin* with his Daughter *Joane, in Maritagio,* without the word *libero,* then the ſaid *Lhewellin,* [112]might give them to *John Scot,* with his Daughter [Page 112.] *Hellen,* in whatſoever manner he did pleaſe; but if King *John* gave the ſaid Mannors of *Budeford* and *Suttehel* to *Lhewellin* with his Daughter *Joane, in libero Maritagio,* then the ſaid *Lhewellin* could not give away from his Son *David* (who out-liv'd the ſaid *Lhewellin*) the ſaid Mannors of *Budeford* and *Suttehel,* to *John Scot,* with his Daughter *Hellen*; for though he who hath Lands given to him in Marriage liable to Services, hath the Inheritance of the ſaid Lands, and may diſpoſe of them as he doth pleaſe; yet he who hath lands given to him in Frank Marriage hath not the inheritance of the ſaid lands, but hath only *Cuſtodiam cum uxore,* and therefore cannot diſpoſe of the ſame; and yet this ignorant perſon, who did write the ſaid Agreement or Deed, doth ſuppoſe that King *John* gave *Budeford* and *Suttehel* in Frank-Marriage to *Lhewellin,* and that the ſaid *Lhewellin* might give them in Frank-Marriage to the ſaid *John Scot.*

Neither can it be objected, that the Law hath been changed in this Point, or otherways holden from what it is now; [113]for I [Page 113.] will ſhew that the Law was the ſame in this particular, and alſo ſo holden after the time of the ſaid *Lhewellin,* in the time of the ſaid *Lhewellin,* and before the time of the ſaid *Lhewellin,* and that I do thus prove;

If you look in my Lord *Coke upon Littleton,* fol. 22. a. you will find that the Husband in the time of King *Edward* III. was ſo far from having the inheritance of Lands given to him in Frank Marriage, that if he and his Wife were divorced, the Woman

ſhould enjoy the whole Land; and for this he cites in the Margent, 13 *Edw.* 3. *tit. Aſs.* 19 *Edw.* 3. *Aſs.* 83. with ſeveral other proofs of the like nature;

Alſo in the time of King *Edward* I. as you may ſee in the ancient Treatiſe called *Fleta*, (which was written in that Kings time) the inheritance in theſe caſes of Frank Marriage was in the Wife with whom the Land was given, and not in the Husband, but it was **Secus* otherways, when Lands were given in Marriage *pro Homagio & ſervitio viri*, as you may ſee [114]in the third Book and 11th Chapter, *de Donationibus in Maritagiis*, where it is thus ſaid, *Et quamvis fiat mentio in donatione, quod terra data ſit in Maritagium tali viro, cum tali uxore, res data tamen eſt liberum tenementum uxoris, & non viri, cum non habeat niſi cuſtodiam cum uxore, donec liberum tenementum ſibi accreſcat, per legem Angliæ: Secus* ſi pro homagio & ſervitio viri, & in Maritagium facta fuerit donatio.* And ſo alſo the Law doth continue until this day.

* *Note.*

[Page 114.]

* Note.

Alſo in the 9 *H.* 3. (which is but three years from that year in which Sir *Peter Leiceſter* doth ſuppoſe the ſaid Deed, or Agreement, betwixt the ſaid *Randle* Earl of *Cheſter*, and the ſaid *Lhewellin* to be made) the inheritance of thoſe Lands which were given to a Man with a Woman in Frank Marriage, was in the Wife, and not in the Husband; for my Lord *Coke* on *Littleton*, fol. 21. b. tells us, That if the King give Land to a Man with a Woman of his Kindred in Frank Marriage, and the Woman dyeth without Iſſue, the Man in the Kings caſe ſhall not hold it for his life, becauſe the Woman [115]was the cauſe of the gift, but otherways it is in the caſe of a common perſon, and for this in the margent he cites 9 *H.* 3. *Dower.* 202. ſo that it ſeems, though a Man might be Tenant by the courteſie of *England* of Lands given to him by a Subject in Frank Marriage with his Wife, yet where the King did ſo give the Lands, if the

[Page 115.]

Woman after ſhe had Iſſue did dye, and her Iſſue all dye before her, the Husband in that caſe would not be Tenant by the courteſie of *England*, or enjoy the Lands for his life, ſo far was he from then having the Inheritance of the ſaid Lands.

So alſo *Bracton* (who was the ſecond that did write of our *Engliſh* Laws, and was living in the time of King *Henry* III. and in the time of the ſaid *Lhewellin*) lib. 2. cap. 11. thus ſayes:

Si autem fiat mentio quod terra data ſit in Maritagium cum uxore & eorum hæredibus, communes hæredes de corpore utriuſque admittantur, qui ſi defecerint, revertitur terra data, & alii remotiores excluduntur: quia res data eſt liberum tenementum uxoris, & non viri, cum non habeat niſi [116]*cuſtodiam cum uxore. Si autem ſic terra detur in Maritagium viro cum uxore, & eorum hæredibus, pro homagio & ſervitio viri (quod ſit aliquando) licet detur in liberum Maritagium, quæ ſunt ſibi ad invicem adverſantia ſive repugnantia, tunc prefertur homagium, & erit acſi fieret donatio tam viro quam uxori.* [Page 116.]

And that the *Maritagium* which *Bracton* here firſt ſpeaks of was *Maritagium Liberum*, is very apparent, becauſe we ſee here, he immediately after ſpeaks of Lands given in Marriage not free, *viz.* of Lands given *in Maritagium, pro homagio & ſervitio viri;* ſo alſo Mr. *Glanvil*, who lived before the time of the ſaid *Lhewellin*, viz. in the time of King *Henry* II. and was the firſt that did write of our *Engliſh* Laws, *lib.* 7. *cap.* 18. after he hath told us what Free Marriage is, hath theſe words:

Cum quis itaque terram aliquam cum uxore ſua in Maritagium ceperit, ſi ex eadem uxore ſua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes, ſi idem vir uxorem ſuam ſupervixerit, ſive vixerit hæres ſive non, illi in vita [117]*ſua remanet Maritagium illud, poſt mortem vero ipſius ad donatorem vel ejus hæredes eſt reverſurum. Sin autem ex uxore ſua nunquam* [Page 117.]

habuerit hæredem, tunc ſtatim poſt mortem uxoris ad donatorem vel hæredes ejus revertetur Maritagium. Et hæc eſt quædam cauſa quare de Maritagio tali non ſolet recipi homagium. Si enim ſic donata eſſet terra aliqua in Maritagium, vel alio modo, quod inde reciperetur homagium, tunc nunquam de cetero ad donatorem, vel ejus hæredes licite poſſit reverti ut ſupradictum eſt.

So that Mr. *Glanvil* alſo here tells us, that the Husband hath not the Inheritance of ſuch Lands as are given to him in Frank Marriage with his Wife, for where Lands are given in Marriage, for which *homage* is not to be done, if the Husband have Iſſue by his Wife, whether that Iſſue live or dye, the Husband ſhall (by the courteſie of *England*) hold thoſe Lands for his life; but if he never have Iſſue, then thoſe Lands upon the death of the Wife ſhall revert to the Donor, or his Heirs, ſo far was the Husband from having the Inheritance thereof; but on the other hand we
[Page 118.] ſee, that [118]Mr. *Glanvil* tells us, that if Land be given in ſuch Marriage, for which *homage* is done, that the Husband hath the inheritance of the ſaid Lands, and may diſpoſe of them as he doth pleaſe, becauſe ſuch Lands can never revert to the Donor or his Heirs, as Lands given in Frank Marriage may do; ſo that hereby the groſs ignorance of him, that did write that Deed or Agreement betwixt the ſaid Earl *Randle*, and the ſaid *Lhewellin*, doth ſufficiently appear, and there can be no Argument brought from their covenanting to do a thing, which could not poſſibly be done.

And here becauſe Sir *Peter Leiceſter* ſayes, that the words in *Maritagio* were oftentimes in old Deeds taken for the words *in Libero Maritagio*, I think it convenient to prove, that whenſoever Lands are given by Deed, with theſe words *in Maritagio*, without any other word joined therewith, that ſuch Lands were given in Marriage liable to ſervices; for although *Maritagium* be twofold *viz. Maritagium Liberum & Maritagium ſervitio obnoxium*, as I have long ſince in the 39 and 40 pages of my reply

to Sir *Peter*'s [119]anſwer to my Defence of *Amicia*, proved both [Page 119.] out of Mr. *Glanvil*, and other Authors, yet when the word *Maritagium* is uſed alone in a Deed, and Lands are paſſed by Deed to a Man with a Woman *in Maritagio*, without either the word *Libero*, or the words *Servitio obnoxio*, in this caſe the word *Maritagium* cannot be the *Genus*, and comprehend both *Maritagium Liberum*, and *Maritagium Servitio obnoxium;* for it is impoſſible that a Man ſhould at one and the ſame time, hold the very ſame Lands of the ſame perſon, in Frank Marriage, and in Marriage liable to ſervices; the onely queſtion therefore is, when a Man gives Lands with any one *in Maritagio* onely, without either the word *libero*, or the words *ſervitio obnoxio*, what conſtruction the Law will make of ſuch a Deed; and whether it ſhall be a Gift in Frank Marriage, or a Gift in Marriage liable to ſervices?

Now that ſuch a Deed ſhall be conſtrued in Law to be a gift liable to ſervices will thus appear;

Firſt, Becauſe if ſuch a Deed be made with the words in *Maritagio* only, and [120]no other word be expreſſed in the ſaid Deed [Page 120.] to declare that it ſhould be a Gift in Frank Marriage, it is impoſſible that thoſe Lands ſhould be held free from all ſervices; For if, as my Lord *Coke upon Littleton* tells us, *fol.* 21 *b.* theſe words *in Liberum Maritagium* are ſuch words of art, and ſo neceſſarily required (in a Gift in Frank Marriage) as they cannot be expreſs'd by words equipollent, or amounting to as much; How can it be that *Lands* given *in Maritagio*, can be held free from ſervices, when there are no equipollent words, nor any expreſſion at all, to ſhew that the Donor intended that the ſaid Lands ſhould be held free from ſervices?

Secondly, Becauſe *Maritagium ſervitio obnoxium*, is the elder Brother to *Maritagium Liberum;* For when Lands are given *in Maritagio ſervitio obnoxio*, ſuch Gifts are agreeable to the Common Law of *England*, but when they are given *in Liberum*

Maritagium, as we may ſee in *Coke upon Littleton*, fol. 21 b. they create an eſtate of inheritance againſt the general Rule of the Law; and therefore though this younger Son be connived at,
[Page 121.] and [121]tolerated, yet, as we may there ſee, the Law requireth that ſuch Gifts be legally purſued, and that is the reaſon why ſuch Gifts cannot be made to any but thoſe of the bloud, as alſo why the words *in Liberum Maritagium*, are ſuch words of Art, and ſo neceſſarily required, as that they cannot be expreſſed by words equipollent, or amounting to as much.

Alſo our Common Lawyers have a Rule (as we may ſee *Coke upon Littleton*, fol. 189. a.) that *Additio probat minoritatem;* and thereupon it is that my Lord *Coke* there tells us, that the younger Son giveth the difference; and purſuant to this Rule, when a Gift is made in *Maritagio*, which is intended to be liable to ſervices, (that being the elder Brother) they uſe the word *Maritagio* in the Deed, and no more; but when it is given in Free Marriage, (which is the younger Brother) according as my Lord *Coke* tells us, the word *Liberum* (which is the difference) is abſolutely neceſſary: and herewith agrees the common practice; For I never ſaw in all my life, where Lands were given *in Maritagio*,
[Page 122.] liable to ſervices, that the words *in Maritagio ſervitio* [122]*obnoxio*, were uſed in any of the ſaid Deeds, but only the words *in Maritagio;* and if they did intend that any other ſervices ſhould be done, over and above thoſe ſervices which the Law did create by the words *in Maritagio*, then, they did afterwards in the ſaid Deeds mention thoſe other ſervices, but elſe not.

So alſo the word *Fœdum*, or *Fee* is twofould, *viz. Fœdum ſimplex*, and *Fœdum tale*, and yet in this caſe, like unto the other, *Fee-ſimple* being the elder Brother to *Fee-tail*, (all inheritances being in *Fee-ſimple* before the ſtatute of *Weſtminſter* 2. cap. 1. as *Littleton* tells us, *lib.* 1. *cap.* 2. *ſect.* 13.) if it be ſaid in any Booke, that a man is ſeiſed in *Fee*, without more ſaying, it ſhall be in-

tended in *Fee-ſimple;* For it ſhall not be intended by theſe words (*in Fee*) that a Man is ſeiſed in *Fee-tail*, unleſs there be added to it this addition *Fee-tail* as we may ſee in *Littleton*, lib. 3. cap. 4. ſect. 293. and according to this Rule, our Common Lawyers do all of them conſtantly uſe the like expreſſions at this day.

[123]So alſo in Blazoning Coats of Armes, and particularly to [Page 123.] inſtance in my own; Becauſe the plain Barre is the elder Brother to all other Barres, it ſhall not be ſaid, that I bear Argent two plain Barres Gules, but only that I beare Argent two Barres Gules, and yet the word *Fœdum* is as much the *Genus* to *Fee-ſimple* and *Fee-tail*, and the word Barre as much the *Genus* to a plain Barre, a Barre engrailed, a Barre Nebule, and all other ſorts of Barres, as the word *Maritagium* is the *Genus* to *Maritagium Liberum*, and *Maritagium ſervitio obnoxium*. And as the words in *Fœdo* alone without the word *ſimplici* joined with them, ſhall ſignifie in *Fœ-ſimple;* and as the word Barre alone ſhall in Blazoning be underſtood to be a plain Barre and not any other ſort of Barre whatſoever, ſo the words *in Maritagio* in a Deed, if no other word be joined therewith, ſhall in Law be conſtrued to be in Marriage liable to ſervices.

And this doth ſhew that Sir *Peter Leiceſter* was miſtaken, when in the 20 and 21 pages of the firſt of his two Books, he charged me with ſaying, that *Maritagium* [124]*eſt duplex, vel Ma-* [Page 124.] *ritagium, vel liberum Maritagium;* For I never ſaid or thought any ſuch thing, but when I did divide *Maritagium*, I did divide it into *Maritagium liberum*, and *Maritagium ſervitio obnoxium*, as you may ſee in the 39 and 40 pages of my Reply; and I have here made it to appear, that when Lands are given *in Maritagio*, without any other word added thereto, they are then given in Marriage liable to ſervices; but the ſaying ſo doth not diſtinguiſh *Maritagium*, into *Maritagium*, and *Maritagium liberum*, as Sir *Peter* did thereupon ſay that I did.

3. Thirdly, Sir *Peter Leiccſter* in his Advertiſement to the Reader, gives us this Record, in theſe following words.

[Page 125.] [125] *Ex Rotulo Chartarum de anno ſexto Regis Johannis, numero* 32.

Charta Lewelini

Principis Walliæ.

JOhannes Dei gratia, &c. *Sciatis, nos dediſſe, conceſſiſſe, & hac Charta noſtra confirmaſſe, Lewelino Principi Northwalliæ, in Maritagium cum Johanna filia noſtra Caſtrum de Elleſmara cum omnibus pertinentiis ſuis: Tenendum ei & hæredibus ſuis qui de eo & prædicta filia noſtra exierint, de nobis & hæredibus noſtris in liberum Maritagium, ſalvis Conventionibus inter nos & ipſum de terra & eodem Maritagio factis: Et nos & hæredes noſtri prædictum caſtrum cum pertinentiis ſuis ei, & prædictis hæredibus ſuis, Warrantizabimus contra omnes qui in eo jus clamare voluerint: Quare volumus,* &c. *quod prædictus Lewelinus & prædicti hæredes ſui habeant & teneant prædictum caſtrum de Elleſmara cum omnibus pertinentiis ſuis, bene & in pace, libere & quiete, integre, in boſco & plano, in pratis & paſcuis, in viis & ſemitis, in aquis & molen-*
[Page 126.] *dinis, in Stagnis* [126] *& vivariis, in moris & marciſcis, & Piſcariis, & in omnibus aliis locis & rebus, cum omnibus libertatibus & liberis Conſuetudinibus ad illud Caſtrum pertinentibus, ſicut prædictum eſt. Teſtibus Domino Henrico Cantuarienſi Archiepiſcopo, G. filio P. Comite Eſſexiæ Willielmo Comite Sarum, Johanne de Curſy: Datum per manum H. de Wellen. Archidiaconi Wellenſis à apud Dovorum,* 16 *die Aprilis, anno,* &c. 6.

Convenit cum Recordo, Gulielmus Ryley Deputatus Algar. May Militis, Februario, 1674.

By which Record Sir *Peter Leiceſter* ſayes it plainly appears, that this Grant to *Lewellin* with *Joane* Daughter of King *John*, was a Grant *in liberum Maritagium* (in expreſs words) of the Caſtle of *Elleſmere* in *Shropſhire*, dated the 16 day of *April*, in the ſixth year of the Reign of King *John*, which falleth in the year after the Incarnation of Chriſt, 1204.

1. To which I anſwer, Firſt, That it doth not plainly appear, as hath before been ſhewed, that the ſaid *Joane*, Wife of *Lhewellin*, was a Baſtard; and in this ve-[127]ry Record, (as ſhe is in all the reſt) ſhe is called the Kings Daughter, without the leaſt blemiſh of Baſtardy at all. [Page 127.]

2. Secondly, It is manifeſt by a Record herein before by me mentioned, that Livery was made of *Elleſmere* unto *Lhewellin* by the Sheriff of *Shropſhire*, about the 6th year of King *John;* and as Livery doth not need to be made upon a legal gift in Frank Marriage, ſo on the other hand my Lord *Coke on Littleton*, fol. 21. b. tells us, that if Lands be given in Frank Marriage with one that is not of the blood of the Donor; yet an Eſtate for life will paſs, if Livery be made; and we may find both by the *Welſh* Hiſtory put out by Dr. *Powell*, pag. 306. and *Matt. Paris* put out by Dr. *Watts*, pag. 625, & 626. that the next year after the death of the ſaid *Lhewellin*, the ſaid *Elleſmere* was in the hands of King *Henry* the III. and it appears by good Record, that it was afterwards committed by him to the truſt of *Hamon le Strange;* ſo that ſuch a Grant, and ſuch an enjoyment as this was, might have been, if the ſaid *Joane* had been certainly a Baſtard, and therefore cannot have any relation to [128]this Caſe of *Amicia* at all. And whereas Sir *Peter* hath heretofore objected, that if this had been but an Eſtate for life, it would have reverted to the King upon the death of *Joane*, who dyed four years before her Husband *Lhewellin*, in that he is clearly miſtaken, becauſe the Grant and Livery were both of them made [Page 128.]

to *Lhewellin* himſelf; And whereas he alſo would have it, that *Elleſmere* did not of right belong to King *Henry* the III. and thereupon in the firſt of his two Books, taking notice of the Articles betwixt King *Henry* the III. and *David* Prince of *North Wales*, doth ask this queſtion, What needed this Covenant from *David* of *Elleſmere*, if it were the right of King *Henry* before that Agreement made? Sir *Peter* if he had ſo pleaſed, might eaſily have diſcerned that there was the ſame Covenant and Grant from the ſaid *David*, concerning ſome Lands of *Roger de Montealto* Steward of *Cheſter*, and of ſome other Barons, &c. of the right and title to which lands there could be no doubt.

3. But Thirdly, What diſputes ſoever might have ariſen about
[Page 129.] this Grant, [129]if it had been made by a common perſon, becauſe the granting part thereof is *in Maritagium*, without any other word, but the *Tenendum* is *in liberum Maritagium;* yet there being a difference betwixt the Kings caſe, and the caſe of a common perſon, this Grant was certainly a void grant, and by conſequence is of no force or weight at all as to the matter in hand; for as we may read in the caſe of *Tenures* put out by Baron *Barry*, and Printed at *Dublin* 1637. pag. 48. in the Grants of a common perſon, the Rule of Law is, that the Grant ſhall be taken moſt ſtrongly againſt the Grantor; But in the King's Grants the Rule is, that they ſhall be taken moſt beneficially for the King, and moſt ſtrongly againſt the *Patentees*. Alſo in the ſame 48. *page*, there is another Rule, that the Grant of the King ſhall not be extended to paſs any thing contrary to the intent of the King expreſſed in his Grant; and if the Grant cannot take effect, according to his intent expreſſed in his Grant, the Grant is void. And accordingly in the 49. and 50 *pages* there are theſe
[Page 130.] caſes put, where the Grants would have been [130]good in the Caſes of common perſons, but not in the Caſe of the King.

In the Lord *Lovell*'s Caſe, 18 *H.* 8. *B. Pat.* 104. The King *ex certa ſcientia, & mero motu*, grants Lands to one and his Heirs-

males; If a common perſon had made ſuch a Grant, the Law would ſay, that the word Males were void, and the *Fee ſimple* ſhould paſs; But will the Law make ſuch conſtruction in the Kings Grant? No; There the Grant ſhall be void, for, he was deceived in his Grant, in that it cannot take effect according to his intent expreſſed in his Letters Patents. 29 *Eliz.* in the *Exchequer*, the Caſe was, King *Hen.* 7. was ſeized of two Mannors, *ſcilicet de Ryton & Condor;* He Grants *ex certa ſcientia & mero motu totum illud Manerium de Ryton & Condor;* Adjudged that the Grant was void.

The like Caſe was reſolved, 39. *Eliz.* where the Queen was ſeized of the Mannors of *Milborne*, and *Saperton* in the County of *Lincoln*, and the Queen grants *ex certa ſcientia & mero motu totum illud Manerium de Milborne cum Saperton in* [131]*com. Linc.* [Page 131.] and it was held, that neither of the Mannors did paſs; and yet if a common perſon had made ſuch Grants, the Grantee in both the ſaid Caſes ſhould have had both the ſaid Mannors.

By which ſaid Rules and Caſes it alſo appears, that this Grant of *Eleſmer &c.* to *Lhewellin* was a void Grant, and by conſequence of no force at all; For that the King was deceived in his Grant, when he made the *tenendum in liberum Maritagium*, is very plain, as well becauſe the King grants the ſaid Caſtle and Lands *in Maritagium* only, (which by Law implies Marriage liable to ſervices) as alſo, becauſe it appears by thoſe words in the Grant, *Salvis conventionibus inter nos & ipſum de* **terra & eodem maritagio factis*, that the King in- * Note.
tended to have money paid, or ſervice done to him,
for the ſaid Caſtle and Lands, and by conſequence they were not to be held *in liberum Maritagium.*

So that all the objections againſt my firſt Argument, though ſo very numerous, are fully anſwered, and wholly removed out of the way, and by neceſſary [132]conſequence it appears, that [Page 132.] *Amicia* was *Hugh Ceviliok*'s legitimate Child.

Againſt my ſecond Argument, Sir *Peter Leiceſter* in the 52 page of his Anſwer to my defence of *Amicia*, doth object, That although Sir *Ralph Mainwaring* was witneſs to very many Deeds of the then Earls of *Cheſter*, and was alſo much converſant with them, as appears by thoſe many circumſtances which I have therein taken notice of; yet this was occaſioned by his place, he being Judge, and that *Philip de Orreby*, who was Judge of *Cheſter* next after the ſaid *Ralph*, was alſo a witneſs to the like Multitudes of Charters or more.

To which I anſwer, that although *Phillip de Orreby* was Juſtice of *Cheſter* above twenty years, yet I beleive it cannot be proved that the ſaid *Phillip* was witneſs to near ſo many Charters of the Earls of *Cheſter*, as the ſaid *Ralph* was; And which ſhews that the familiarity betwixt the ſaid Earls, and the ſaid *Ralph*, was not upon that account which Sir *Peter* ſpeaks of, we find as
[Page 133.] before appears that the *ſaid Ralph*, was a witneſs to [133] *Hugh Civiliok*'s Deeds of confirmation to the Priory of *Calc* in *Darbyſhire*, and was with *Randle Blundevil* at *Coventry*, and a witneſs to his Charter to the Burgeſſes there, which could not be occaſioned, by his being Judge.

And as to my third Argument Sir *Peter Leiceſter* gives this only Anſwer, as we may ſee in the 53 *page* of his Anſwer to my defence of *Amicia*, that indeed Precedents are ſcant; but ſome there be: what do you think of *Ranulpho de Aſtbury nepote Comitis Ceſtriæ;* who is put the laſt of all the Witneſſes in the Deed, as you may ſee in the *Addenda* of my Book? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord: But you will ſay, I cannot prove him a Baſtard; yet I ſhould be glad to find out his Extraction, if he were not: 'tis a ſhrewd preſumption.

So that Sir *Peter* doth in effect confeſs, that he hath no ſuch Precedent at all, and indeed this precedent will fail him for two reaſons.

Firſt Becauſe Sir *Peter* doth as good [134]as confeſs, that he cannot prove him to be a Baſtard, (and he might perhaps be a younger Brother or ſon of a younger Brother, and ſo not neceſſarily a Knight or a Lord.) [Page 134.]

And Secondly; Becauſe he doth not call himſelf the Earl's Nephew, but is called ſo by others; and that is ſo far from contradicting, that it doth confirm what I ſaid in my former Book.

And whereas Sir *Peter Leiceſter* ſays, he ſhould be glad to find out the Extraction of the ſaid *Randle de Aſtbury*, if he were not a Baſtard. Though it be perhaps impoſſible now to tell him his Extraction certainly, becauſe he lived ſo long ſince, and we only find him mentioned as a witneſs in one Deed, yet I doubt not but to ſatisfie the Reader, that he and his Father and Mother might all be legitimate; For, (not to ſay that he might be a ſon of ſome other Daughter of the ſaid *Hugh Civiliock* by his former wife) he might poſſibly be the Son of *Roger*, Son of *Hugh Civiliock;* and I know no reaſon why the ſaid *Roger* ſhould by Sir *Peter* be ſuſpected to be a Baſtard, for he only [135]finds him (as appears by his *Hiſtorical Antiquities*, pag. 134.) mentioned as a witneſs to a Deed of his Brother *Randle*'s, to the Abby of St. *Werburge:* So that he conceives him to be a Baſtard, becauſe neither he, nor any Iſſue Male of his, ſucceeded in the Earldom of *Cheſter*, after the death of *Randle Blundevil;* whereas the ſaid *Roger* might be lawful, and be Father to this *Randle de Aſtbury*, and yet both he and the ſaid *Randle de Aſtbury* might dye before the ſaid *Randle de Blundevil;* For he lived very long, and was Earl of *Cheſter* above 50 years: ſo that this third Argument of mine is not anſwered at all. [Page 135.]

And whereas I have in my 4th Argument, ſhewed out of Sir *Henry Spelman*'s Gloſſary on the word *Baſtardus*, how the ſaid Sir *Henry* quotes *Couſtum. du Normand. Artic.* 77. *in Annot.* thus: *Quoties enim agitur de honore vel commodo filiorum, appel-*

latione filiorum non comprehenduntur Baſtardi: And have from thence argued, that *Amice* would not have been ſtiled *filia*, as ſhe is in the ſaid Deed, unleſs ſhe had been a legitimate Child;
[Page 136.] Sir *Peter* in the 63[d] *page* of his Anſwer to my [136]Defence of *Amicia*, doth object againſt this in theſe very words.

And what you add out of *Spelman*, is little to the purpoſe; that in Caſes of Honour and Profit, diſtinction was then made; that by the Appellation of Sons, Baſtards are not comprehended by the Cuſtoms of *Normandy:* What then? this ſuppoſeth that in other Caſes, and formerly by the Appellation of Sons, Baſtards were comprehended: This makes directly againſt you, and you know what *Spelman* ſaith in the very words next following —— That the ancient Northern people admitted Baſtards to ſucceed in their Inheritance; and that *William* the Conqueror was not aſhamed of that title, who began his Letter to *Alan*, Earl of *Little Britain*, (as he did many others) *Ego Willielmus cognomento Baſtardus.* But what is all this to the anſwering of the Argument, or proving *Hugh Cyveliok* to have had a former Wife? only you would have the words *in libero Maritagio*, to prove *Amice* abſolutely legitimate: this is all the Anſwer you give to the Point; and this will not do it, as is before proved, whither I have referred the ingenious Reader.

[Page 137.] [137]To which I anſwer, Firſt, that though Sir *Peter Leiceſter* doth here ſay, that this (which I here cite) ſuppoſeth that in other Caſes, and formerly by the Appellation of Sons, Baſtards were comprehended: And that this makes directly againſt me; yet he is very much deceived in ſo ſaying: For if in other Caſes by the Appellation of Sons, Baſtards were comprehended, but were not comprehended by that Appellation in Caſes of Profit; it will from hence appear that *Amicia* was legitimate, becauſe ſhe was called *Filia* in a Caſe, that did concern her Profit, and by conſequence her Father muſt have a former Wife. And whereas he tells us, out of the next words of *Spelman*, viz. that

the ancient Northern People admitted Baſtards to ſucceed in their Inheritance; and that *William* the Conqueror was not aſhamed of that Title, who began his Letter to *Alan*, Earl of *Little Britain*, as he did many others, *Ego Willielmus cognomento Baſtardus.*

I do not know how Sir *Peter* can apply thoſe expreſſions to the Caſe in hand, and if he could, they would make againſt
[138]him; For, when Baſtard Children were ſo much eſteemed, as [Page 138.]
to be admitted to ſucceed in the inheritance, then certainly illegitimate Daughters were very near of equal repute with thoſe that were legitimate. And by this Rule, why ſhould not *Amicia*, if ſhe was a Baſtard, be ſo called, as well as *Paganus* was? (who as Sir *Peter* ſays, was the ſon of *Hugh Civiliok*) or why ſhould *Hugh Civiliok* himſelfe, be more aſhamed to call her ſo, than *William* the Conqueror was to ſtile himſelf a Baſtard.

But theſe Caſes of Princes differ much from thoſe of Subjects; For Sir *Richard Baker* in his *Chronicle* printed at *London*, 1665. page 22. in the Life and Reign of King *William* the Conquerour, tells us, that in thoſe days it was not unfrequent, for Princes to confer their Principalities after their own deceaſes, upon whom they pleaſed, counting it as lawful to appoint ſucceſſors after them, as ſubſtitutes under them; And he alſo obſerves how in our time, and Kingdom, the Duke of *Northumberland* prevailed with King *Edward* the ſixth, to exclude his two Siſters, *Mary* and *Elizabeth*, and to appoint the Lady *Jane Grey*, Daughter
of [139]the Duke of *Suffolk*, to ſucceed him: ſo that Precedents [Page 139.]
brought from Princes, will in this Caſe be of no force at all.

And whereas I have ſhewed in my 5th Argument, that although the Conſtable of *Cheſhire* (who had that Office in Fee) was by Charter to go next to the Earl of *Cheſter;* And the *Dapifer*, *Seneſchal* or *Steward* of *Cheſhire*, (who alſo had that Office in Fee, was to go next to the ſaid *Conſtable*, that yet the ſaid *Ralph Mainwaring*, notwithſtanding the ſaid Charters, is

not only named as a Witneſs before the ſaid *Conſtable, Seneſchal,* and other Barons, in thoſe Deeds which I have there mentioned, but that alſo the Earl of *Cheſter* himſelf in his Charter, (contrary to all other Precedents in the times of other Juſtices which I have ſeen) doth name the Juſtice of *Cheſter* before both the *Conſtable* of *Cheſhire*, and *Steward* of *Cheſhire.* And that I did ſuppoſe, that the reaſon why the ſaid *Ralph* had that great reſpect, was, becauſe he had married a lawful Child of the ſaid Earl, it being too great to have been ſhewed him, if he had only
[Page 140.] married one who [140]was a Baſtard; and that it will be very difficult to give any other reaſon thereof: Sir *Peter Leiceſter* in the 77th *page* of his Anſwer to my Defence of *Amicia*, doth only give this Anſwer in theſe very words.

To this I ſay, it will not be difficult at all to give a reaſon, and much more eaſie, than to give a reaſon, why *Amice* ſhould be no Baſtard, becauſe Sir *Raufe Manwaring* is ſometime ſubſcribed before the Barons of *Cheſhire.* The reaſon I give is this, that anciently in thoſe Ages, the Juſtice was put ſometimes before the Barons, and ſometimes after; and ſometimes after the *Conſtable*, and *Dapifer*, and before the reſt of the Barons, as it hapned: For proof, ſee the Deed in my Book, making the Baron of *Halton*, the prime Baron, *pag.* 160. where the Juſtice comes after all the Barons; alſo in the Deed of Earl *Randle* to his Barons, *pag.* 162. where the Juſtice comes next after the *Conſtable* and *Dapifer*, and before the other Barons; ſee alſo in my Book, *pag.* 130, 131. two Deeds made by *Hugh Cyveliok:* In the one, the Juſtice is put after the *Conſtable* and *Dapifer:* In the other, the Juſtice is
[Page 141.] put before them; many other like exam-[141]ples may be produced elſewhere: I will appeal herein to Mr. *Dugdale*, or to any Antiquary in *England;* and conſidering the great uncertainty of ſubſcription of Witneſſes in old Deeds, ſometimes putting one before another, in one Deed, and again putting the ſame perſon after the other in another Deed; ſometimes putting *Domino* prefixed before the names of ſome perſons in one Deed, and omitting the word *Domino* before the names of the ſame perſons

in another Deed, whereof I have ſpoken, *pag.* 5, 6. in the beginning of this Book. I ſay, had you well conſidered or obſerved theſe things, it was not worth your labor to have added thoſe three or four leafs in the cloſe of your Book.

To which I reply, That what Sir *Peter* ſayes in the 77, 78, and 79 *pages* of his ſaid Anſwer, is ſo far from anſwering that Argument of mine, which is contained between the 69, and 75 *pages* of my firſt Book, that that which Sir *Peter* pretends to be an Anſwer, (if rightly underſtood) is the very Argument which I there frame againſt him ; For, though what he ſayes, *pag.* 78. be true, that [142]ſometimes the *Juſtice* is put after the *Conſtable* and *Dapifer*, and ſometimes before the *Conſtable* and *Dapifer*, yet all the *Juſtices* of *Cheſter*, except Sir *Ralph Mainwaring*, are named in the Charts of the Earls of *Cheſter*, after the *Conſtable* and *Dapifer*, and are alſo named after the *Conſtable* and *Dapifer*, when they were witneſſes to any Deeds ; But it is only in the time of the ſaid Sir *Ralph Manwairing*, when the *Juſtice* is named before the *Conſtable* and *Dapifer* in the Charts of the ſaid Earls, and it is only he who is named as a Witneſs, and that frequently before the *Conſtable* and *Dapifer* as I have proved by ſeveral Deeds, which I then mentioned both out of Sir *Peters* former Book, and elſewhere, and doth alſo further appear, by another Deed in his *Hiſtorical Antiquities*, pag. 205. where the ſaid Sir *Ralph Mainwaring* is alſo named as a witneſs before the then *Dapifer*, *Ralph de Montealto ;* and this reſpect was ſhewed to the ſaid Sir *Ralph Mainwaring*, although, as we may ſee in his ſaid Book, *pag.* 160. *&* 161. that the *Conſtable* by Charter was to go next the Earl, and had his Office in Fee, and that the Steward [143]was to go next after the Conſtable, and had his Office alſo in Fee.

[Page 142.]

[Page 143.]

But when *Phillip Orreby*, who did ſucceed the ſaid Sir *Ralph Manwairing*, was Juſtice of *Cheſter*, then, according to the old uſual way, as appears in the 162. *page* of Sir *Peters* firſt Book,

the *Conſtable* and *Dapifer* were again named in the Earls Chart before the Juſtice of *Cheſter*, and alſo as we may ſee at the bottom of the 144 *page* and top of the 145 *page* of his ſaid Book, the ſaid *Conſtable* was named as a Witneſs before *Phillip de Orreby*, though then Juſtice of *Cheſter;* and I beleive Sir *Peter* cannot ſhew any Chart of any of the Earls of *Cheſter*, in which any other Juſtice of *Cheſter* had the like preeminence; neither do I think he can ſhew any Deeds, in which any other Juſtice is named as a witneſs before the *Conſtable* or *Dapifer;* and if any ſuch ſingle Precedent can perchance be found, I am confident it will prove to be a Deed wherein the ſaid *Philip de Orreby* is named as a witneſs, and was occaſioned by the ſimplicity of the Clark, who did write the ſaid Deed, who finding Sir *Ralph*
[Page 144.] *Mainwa-*[144]*ring* Juſtice of *Cheſter* (the immediate Predeceſſor of the ſaid *Philip de Orreby*) to be written as a witneſs before the *Conſtable* and *Dapifer*, might thereupon think that *Philip de Orreby* ſhould alſo be ſo placed, though it was not allowed to the ſaid *Philip*.

And although Sir *Peter* truly objects, *p.* 78. how great the uncertainty of ſubſcription of witneſſes was in old Deeds, ſometimes putting one before another in one Deed, and after putting the ſame perſon after the other in another Deed; yet, that will be nothing in this Caſe, for Sir *Peter* himſelf confeſſes, *pag.* 160. & 161. of his *Hiſtorical Antiquities;* notwithſtanding the uncertainty of ſubſcription of Witneſſes, that after certain Offices were annexed to certain Barons, that the matter was without controverſie (as to the *Conſtable* and *Dapifer*) and that the *Conſtable* of *Cheſhire* in Fee carried it clear by his Office, which was annexed to his Barony, and that the *Steward* was the next after him.

And therefore this Preeminence being thus given to the ſaid
[Page 145.] Sir *Ralph*, and to [145]him only; and he alſo, ſo far as I have found, being ever named before all the other Barons of *Cheſhire*, after he had married the ſaid *Amicia*, as well when he had parted

with his Office of Juſtice, as before; I think I may ſtill ſay, it will be difficult to give a reaſon thereof, if he did not marry a lawful Daughter of the aforeſaid Earl.

6. Sixthly, My laſt Argument to prove *Amicia* lawful, was raiſed, from the vaſt diſproportion of years, that was betwixt *Hugh Cyveliok*, and his Wife *Bertred*, it not being at all probable, that ſo great a perſon as Earl *Hugh* was, ſhould continue unmarried, without having a former Wife until the ſaid *Bertred* became marriageable. And this I formerly proved by three reaſons.

Firſt, By ſhewing how Earl *Hugh* did join with his Mother *Matilda*, in giving by Deed *Stivinghale*, and other things, to *Walter Durdent* Biſhop of *Cheſter*, and his Succeſſors, to which Deed *Euſtace* the Conſtable was a Witneſs, and I having there proved out of Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, that the ſaid *Eu-*[146]*ſtace* was ſlain in the year 1157. (in which year the [Page 146.] ſaid *Bertred* was born) it would from thence follow, that if that Deed was ſealed immediately before the ſaid *Euſtace* was ſlain, yet the ſaid *Hugh* muſt needs be at the leaſt 21 years older than his Wife *Bertred*.

Secondly, I have ſhewed out of *Caradocus Lhancaruenſis* (whom I have proved to be an Author of good credit, and to be living at that time) that the ſaid *Hugh* in the year 1142. fortified his Caſtle of *Cymaron* and *wan Melyenith* to himſelf; and if the ſaid *Hugh* was but 12 years of age at that time, yet he would be about 41 years old when he married the ſaid *Bertred*.

And Thirdly, I have mentioned a Deed which is in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, which the ſaid *Hugh* when he was Earl, made to the Nuns of *Bolington*, in which is this expreſſion, *Sicut fuit tempore Henrici Regis;* by which it appears, that the ſaid Deed was made in the time of King *Steven:* For

the ſaid *Hugh*, as Sir *Peter Leiceſter* tells us, came to be Earl in
[Page 147.] the year 1153. 18. of King [147]*Steven*, and dyed *Anno Domini* 1181. 27 *H.* 2. But in the time of King *Henry* the ſecond, it could not be made; for then Earl *Hugh* would have ſaid, *Sicut fuit tempore Henrici primi*, or elſe he would have uſed ſome other words to diſtinguiſh King *Henry* the firſt, from the then King *Henry* the ſecond. And if it was made in the time of King *Steven*, he dying in the year 1154. which was three years before the ſaid *Bertred* was born, if the ſaid Deed was made immediately before King *Steven* dyed, yet Earl *Hugh* would be at leaſt 24 years older than *Bertred* his Wife.

Againſt every of theſe three reaſons, Sir *Peter Leiceſter* doth object, and as to the firſt he tells us, how *Richard* Earl of *Cheſter* joined with his Mother *Ermentrude* in the Grant of *Wadmundeſley*, Anno Domini 1106. when he was ſcarce twelve years old, and ſo would have the Caſe of *Stivinghale*, to be like that of *Wadmundeſley*, and therefore will ſuppoſe Earl *Hugh*, when he made the Deed of *Stivinghale* to be then but about 12 years old alſo, becauſe his Mother then joined with him. But in my An-
[Page 148.] ſwer to Sir *Pe-*[148]*ter*'s two Books, *pag.* 41, 42, 43, 44, 45, & 46. I have ſhewed out of the Book of *Abington*, that that
* *Note.* Deed of *Wadmundeſley* was ſealed with the *Seal of the Earls Mother only, and not with the Earls Seal at all, and that it was taken notice of as a ſtrange Caſe, and other very material differences, I have there obſerved beſides, to which, for brevity ſake, I ſhall refer the Reader at this time.

And whereas he hath objected againſt my ſecond reaſon, that *Caradocus Lhancaruan* is not to be believed, becauſe he ſays King *Steven* took *Geffrey Mandevyle* Priſoner at St. *Albans* in the year 1142. whereas *Matt. Paris* in that Edition put out by Dr. *Wats*, pag. 79. ſays it was *William Mandevyle;* if you look in *Henry* of *Huntington*, who lived in the time of the ſaid King *Steven*, pag. 393. lin. 15. And in the Hiſtory of *Simeon Dunel-*

menſis, (who alſo lived in the time of the ſaid King *Steven*, and whoſe Hiſtory was continued for about 25 years, by *John Prior* of *Hagulſted* or *Hexam*) Col. 273. lin. 15. And in *Roger Hoveden* (who lived in the times of King *Henry* the II. [149]King *Richard* [Page 149.] the I. and King *John*) in his Annals printed at *Francfurt*, 1601. pag. 488. l. 41. And in *Gulielmus Nubrigenſis*, who lived in the times of King *Richard* the I. and King *John*, lib. 1. cap. 11. And in *Ralph de Diceto*, who was Dean of *Pauls* in King *John*'s time, in his *Abbrev. Chronic.* Col. 508. l. 32. And in *Gervaſius* a Benedictine Monk of *Canterbury*, (who lived in the time of King *John*) Col. 1360. lin. 7. And in *John Bromton*'s *Chronicon*, which ends with the death of King *Richard* the I. Col. 1033. lin. 1. you will there find, that according to what *Caradocus Lhancaruenſis* ſays, his name was *Geffrey*, and not *William Mandevyle*. And if Sir *Peter* had but lookt in *Mat. Paris* on the other ſide of the leaf, *pag.* 80. *l.* 20. he would have found *Mat. Paris* alſo calling him *Geffrey Mandevyle*, ſo that the calling of him *William* in the former leaf, was either a ſlip of the Printer, or of *Mat. Paris*'s Pen. Neither is that ſecond Objection which Sir *Peter* makes againſt this ſecond reaſon, of any force: For whereas it is miſprinted, *Hugh* Earl of *Cheſter*, inſtead of *Hugh* Son to the Earl of *Cheſter*, as appears by the amendment of the *Errata*, at the end of [150]the ſaid Book, Sir *Peter Leiceſter* [Page 150.] of his own Authority, without naming any Author to juſtifie what he ſays, tells us, that it ſhould have been printed *Randle* Earl of *Cheſter*, and not *Hugh* Son to the Earl of *Cheſter*; but I will appeal to the Reader, who is moſt like to know, how it was in *Caradocus Lhancaruenſis*'s *Welſh* Manuſcript, whether Sir *Peter*, who never ſaw it, or Dr. *Powel*, who tranſlated the ſame into *Engliſh* out of *Welſh*. And whereas Sir *Peter Leiceſter* in the 39 and 40 *pages* of his ſecond Reply, objects againſt my third reaſon, and ſays, that in the ſaid Deed to the Nuns of *Bolington*, the not adding the words of *Henrici Regis nunc*, ſhews clearly it is meant of *Hen.* I. In that he ſays very true, for the words *ſicut fuit tempore Regis Henrici*, do certainly relate to King *Henry*

the firſt's time, becauſe when this Deed was made, there had been no other King *Henry;* but it ſhews clearly, that this Deed was made in King *Steven*'s time; for if it had been made in King *Henry* the ſecond's time, it would have ſaid, *ſicut fuit tempore Regis Henrici primi,* or elſe it would have uſed ſome other expreſſion, to diſtinguiſh King *Henry* the I. from King *Henry*
[Page 151.] the II. [151]the then King. And if that Deed was made in King *Steven*'s time, then my ſaid Argument is ſtill in force; for King *Steven* dyed three years before *Bertred* was born. And I think I may ſecurely ſay, it will be hard for any one to ſhew me the like expreſſion to that of *ſicut fuit tempore Henrici Regis,* in any Deed, that he can make appear was made by a Subject in the time of King *Henry* the II. or any other later King *Henry,* or in the time of any other King in the like Caſe.

But beſides theſe Objections againſt my ſaid three reaſons, Sir *Peter Leiceſter* knowing very well, (according to what he did once acknowledge in the 49 *page* of his Anſwer to my Defence of *Amicia*) that if there was any great number of years betwixt the age of *Hugh Cyveliok,* and his Wife *Bertred,* a man might then reaſonably ſuppoſe, that the ſaid Earl had a former Wife, doth labor very much to prove, there was no great difference of age betwixt them, and to that purpoſe he gives us this Record.

[Page 152.] [152]*Scaccarium apud Weſtminſter.*

In Rotulo de Dominabus Pueris, & Puellis, de anno 31 *Hen.* 2. *in Cuſtodia Rememoratoris Regis exiſtente, continetur (inter alia) ut ſequitur, &c.*

Com. Lincoln.

Balteſlawe Wapentak.

MAtilda Comitiſſa Ceſtriæ eſt de donatione Domini Regis: & fuit filia Roberti Comitis Gloceſtriæ filii Regis Henrici primi, & eſt L annorum, & amplius: Hujus Villæ recepit Comi-

tiſſa his VIII. annis: Ipſa tenet Wadinton in dote de feodo Comitis Ceſtriæ: & firma eſt XXII. libr. per annum: dicta villa valet per annum XL. lib. cum hoc inſtauramento, ſcilicet, II. Carucis, IIII. Vaccis, I. Tauro, IIII. ſuibus, I. verre, D. ovibus, quæ ibi ſunt —— &c.

153 *Com. Lincoln.* [Page 153.]

Feretre Wapentak.

Bertrea Comitiſſa, filia Comitis de Evereous, uxor Hugonis Comitis Ceſtriæ, eſt de donatione Domini Regis; & eſt xxix. *annorum Terra quam Comitiſſa habet,* xl. *lib.* **Maritagium; & defectus ſunt ultrà mare, ideo neſciunt Juratores quid valeant. Dominus Rex præcepit, quod ipſa haberet* xl. *libratas terræ Domini ſui in Beltesford, Hemmingly, & Duninton: licet non habuit niſi* xxxv. *libratas, &* x. *ſolidatas. Quia (ut dicunt) dicta terra non poteſt plus valere cum Inſtauramento quod Comitiſſa ibi recepit; ſcilicet,* v. *Carucis,* cccxli. *ovibus,* x. *ſuibus,* i. *verre. Sed ſi in Duninton apponerentur* cc. *oves, &* x. *ſues, &* i. *verris, tunc valeret.*

* My Copy is *Maritagium & Dos ejus ſunt ultrà mare.*

And from this Record, Sir *Peter Leiceſter* tells us, that it clearly appears that the ſaid *Matilda* or *Maude* was born, *anno,* 1135. and was aged fifty years, *anno Domini,* 1185. 31 *Hen.* 2. and that 154therefore Earl *Hugh* could not be born till the year 1150. at [Page 154.] ſooneſt, and ſo could be but about ſix (or ſeven) years older than his Wife *Bertred;* and hereupon he ſays that he hath laid this Argument aſleep for ever, which was brought from their great difference in age.

To which I anſwer, that this Argument is ſo far from proving clearly what Sir *Peter Leiceſter* doth ſuppoſe it to prove, that it is of no force at all; for I ſhall yet make it manifeſt to all, that *Hugh Cyveliok* was very many years elder than his Wife *Bertred*, and that *Matilda* her ſelf was alſo of a far greater age than Sir

Peter Leiceſter from this Record doth ſuppoſe her to be; and therefore beſides thoſe three Reaſons which I have formerly given, I ſhall alſo give theſe ſeveral Reaſons to make good what I do here ſay:

And firſt, I deſire the Reader to obſerve, that though this Record tell us, that the age of *Bertred* was twenty nine years, in the 31 year of King *Henry the Second*, yet it doth not ſay
[Page 155.] that *Matilda* [155]was aged fifty years at that time, but that ſhe was then aged fifty years and more, which it might ſay, and ſay true, if the ſaid *Matilda* had been ninety years of age at that time.

And Secondly, I ſhall appeal to thoſe who are verſed in theſe matters, whether it be any ſtrange thing to find a perſon ſaid to be aged thirty years and more, or forty years and more, when they are really aged many years more, than that number of years which is particularly mentioned, and eſpecially when the weaker Sex is concerned, and the age of the Party not material to the Caſe in hand.

Thirdly, I deſire the Reader to obſerve, how this new Argument of Sir *Peter*'s doth claſh with what he hath ſaid before; for in the 89 page of his firſt Reply, he ſuppoſeth Earl *Hugh* either to be born in the year 1145. or in the year 1143. The firſt of which reckonings if *Matilda* was born in the year 1135. makes him to be born when his Mother was but ten years old, and the ſecond reckoning makes him to be born, when his Mother was but 8 years old, ſo little did Sir *Peter* conſider what he hath formerly ſaid.

[Page 156.] [156]Fourthly, What likelihood can there be, that *Matilda* was born in the year, 1135. ſince we find that ſhe and her Son Earl *Hugh* ſealed the Deed of *Stivinghale* in the life-time of *Euſtace* the Conſtable, who, as appears before, was ſlain in the year, 1157.

whereas by that reckoning *Matilda* her ſelf could not have been one and twenty years of age, when ſhe and her Son ſealed that Deed of *Stivinghale*, unleſs that Deed was ſealed but about a year before the death of the ſaid *Euſtace;* for from the year 1135. in which Sir *Peter* ſuppoſeth *Matilda* to be born to the year 1157. in which *Euſtace* was ſlain, is but two and twenty years.

Fifthly, It is not likely that *Matilda* was ſo young as Sir *Peter* did conceive her to be, becauſe as you may ſee in Mr. *Selden*'s *Titles of Honor*, printed at *London*, 1631. pag. 647. out of an old Rithmical Story attributed to one *Robert* of *Glouceſter*, the Father and Mother of the ſaid *Matilda* were married in the year, 1109. The Verſes concerning the ſaid Marriage are many, but the words [157]as to the time of the Marriage are theſe: [Page 157.]

> This was End leue hundred yeer and in the nith yeer right
> After that bre Louerd was in his moder a hight.

Now if the ſaid *Matilda* was born in the year, 1135. ſhe then was not born till ſix and twenty years after the Marriage of her Father and Mother, which though poſſible, is yet very improbable ſo to be; indeed *Stow* in his *Annals* printed at *London*, 1631. *pag.* 137. 50. *b.* makes this Marriage in the year 1110. but he there miſtakes the *Chriſtian* Name of the Wife of the ſaid *Robert* Earl of *Glouceſter*, and calls her *Maude* inſtead of *Mabel;* and for that reaſon, as alſo becauſe the Author of the ſaid Rithmical Story was firſt in time, he ought to be credited in this Point before Mr. *Stow;* however it could make but one year difference in time.

Sixthly, If the ſaid *Maude*, according to Sir *Peter*'s fancy, was not born till the year, 1135. then, as Sir *Peter* himſelf [158]con- [Page 158.]
feſſeth in his *Peroratio*, pag. 78. Earl *Hugh* could not be imagined to be born till the year, 1150. at ſooneſt; and if he was

not born till the ſaid year, 1150. he then would have been but one and thirty years of age, when he died; for as you may ſee in Sir *Peter*'s *Hiſtorical Antiquities*, pag. 134. he died in the year 1181. Now what likelihood is there that this Earl *Hugh* ſhould be but one and thirty years of age when he died, ſeeing he had his Daughter *Amicia* married in his life-time to *Ralph Mainwaring*, and none knows how many years before the death of the ſaid Earl.

Seventhly. *Speed* in his Hiſtory of *Great Brittain*, printed 1632. *pag.* 473. *a. Daniel* in his Collection of the Hiſtory of *England*, pag. 62. *Polydore Virgil* in his *Hiſtor. Anglic.* put out by *Thyſius*, and printed at *Leyden*, 1651. pag. 264. *Matt. Paris*, put out by Dr. *Wats*, and printed at *London*, 1640. p. 78. *Henry Huntington* who lived in King *Stephen*'s time printed at *Frankfurt*, 1601. pag. 390. *Roger Hoveden* (who was, as *Voſſius* ſays, *Inter Domeſticos Regis Henrici ſecundi*) in the ſame Edition at
[Page 159.] *Frankfurt*, p. 485. [159] *John Prior* of *Hagulſtad*, or *Hexham*, who lived in *Henry the Second*'s time, *col.* 269. *John Brompton*, col. 1030, (which two laſt were printed at *London*, 1652,) and *Guliel-mus Neubrigenſis*, who lived in King *Richard the Firſt*, and King *John*'s time, in that Edition printed at *Heidelberg*, 1587. p. 363. and *Ordericus Vitalis*, who lived in King *Stephen*'s time, *lib.* 13. *Eccles. Hiſt. pag.* 921. and the Author of the Treatiſe called *Chronica Normanniæ*, p. 978. do ſome of them in the year, 1141. and ſome of them ſooner, (but occaſionally onely) take notice of that relation of Father in Law, and Son in Law that was betwixt *Robert* Earl of *Glouceſter*, and *Randle* Earl of *Cheſter*, and Sir *Peter* himſelf, as we may ſee in his *Hiſtorical Antiquities*, p. 121. and in his Anſwer to the *Defence of Amicia*, p. 48 and 49. doth acknowledge that ſome Authors do ſpeak of that Relation, in the year 1139. Now the ſaid *Randle* Earl of *Cheſter*, as Sir *Peter* ſays in his *Hiſtorical Antiquities*, was a Gallant Man at Arms, and took King *Stephen* priſoner in the year 1141. and he alſo was in the Field, and in very great danger in the year 1136. as we

may ſee in the Hiſtory written by *Simeon* [160] *Dunelmenſis*, and [Page 160.] continued by *John Prior* of *Hagulſtad*, col. 259. What likelihood therefore is there that he ſhould be Husband to the ſaid *Maude* in the year 1139. which Sir *Peter* confeſſeth he was, if ſhe was not born till the year 1135. eſpecially conſidering that none of the ſaid Authors (that I can find) do tell us the time of their Marriage, or take any notice that ſhe was a Child: Nay Mr. *Daniel* is ſo far from that, that he ſays the Earl of *Cheſter* left his Brother and Wife within the ſaid Caſtle, to defend it, but the Earl of *Cheſter*'s name is there miſprinted, inſtead of *Randle*, he being called *Ralph*.

Eighthly, Sir *Peter Leiceſter* in his *Hiſtorical Antiquities*, p. 131 and 132. gives us this Deed following in theſe very words;

ROberto Dei gratia Lincolnienſi Epiſcopo, & Capitulo ſanctæ Eccleſiæ Lincolniæ, totiq; Clero illius Præſulatus, Hugo comes Ceſtriæ Salutem. Necnon & Conſtabulario, & Dapifero, & Baronibus, & Miniſtris, & Famulis, & Hominibus ſuis omnibus, tam Cleris, quam Laicis, [161] *ſalutem ſimiliter, vos ſcire volo, me* [Page 161.] *conceſſiſſe & confirmaſſe ſancti-monialibus de Grenefelt illam terram quam Willielmus filius Otuheri eis in Elemoſynam perpetuam dedit; quam vero pater meus Comes Ranulphus eis conceſſit Carta ſua confirmatam: Ea propter volo & præcipio, quod præfatæ ſanctimoniales terram illam perenniter bene & quiete, & libere habeant & poſſideant; Teſtibus Matilda Comitiſſa Matre mea, Simone filio Willielmi, Rogero Capellano, Ricard Capellano & aliis multis; Apud Beltesford valete.*

Now this Deed being made by Earl *Hugh* without his Mother *Matilda* joining with him (ſhe being only Witneſs to the ſaid Deed) and it being ſealed only with the Earls Seal (which ſaid Seal Sir *Peter* doth there deſcribe) it will not I ſuppoſe be deny'd but that the ſaid Earl was then at age when he ſealed the ſaid Deed; now there being at the time of the making of the ſaid

Deed a *Robert* Biſhop of *Lincolne* living, and there being no *Robert* who was Biſhop of *Lincolne* during any of the time that the ſaid *Hugh* was Earl, except *Robert de Chiſney*, furnamed by
[Page 162.] ſome *de Querceto*, by others [162]*Cheſneto* (which as Biſhop *Godwin* ſays was all one, the one being drawn from the French, the other Latin, both ſignifying a Grove of Oaks) it will thereupon follow that this Deed was made whilſt the ſaid *Robert de Chiſney* was alive; now *Gulielmus Nubrigenſis* printed at *Heidelberg*, 1587. pag. 398. and *Matt. Weſtminſter* printed at *London*, 1570. *part* 2. *pag.* 48. and ſeveral others tells us, that this *Robert de Chiſney* died in the year 1167. and Biſhop *Godwin*, in that Edition printed at *London*, 1615. *pag.* 293. tells us the very day, and ſays it was *January* 8. 1167. And *John Brompton*, col. 1059. ſays it was in the 14 of *Hen.* 2. which agrees right with Biſhop *Godwin*, if he reckon according to the *Church of Englands* Account; Now if the ſaid *Matilda* had been born in the year 1135. according to Sir *Peter*'s fancy, ſhe would have been but about 32 years of age in the year 1167. If therefore that Deed had been made at the very time of the death of the ſaid Biſhop (which there is no reaſon to believe it was) yet the ſaid *Hugh* being then at age, if his Mother had been born in the year, 1135. ſhe muſt
[Page 163.] have had her Son *Hugh* when [163]ſhe her ſelf was but about eleven years old, which is unreaſonable to imagine, and therefore we may ſafely conclude ſhe was born many years before.

Ninthly, If you look into the firſt Part of Sir *William Dugdale*'s *Baronage of* England, *pag.* 40. we ſhall find him ſpeaking of a Record (of which I have now a Copy) which ſhews, that in 10 *Hen.* 2. *Hugh Cyveliok* was one of thoſe Temporal Lords who came to an accord with the King for their ancient Liberties. Now the tenth year of King *Henry the Second* falling out part of it in the year 1163. and part of it in the year 1164. (in which latter year the ſaid Record is dated) the ſaid *Matilda*, if ſhe had been born in the year 1135. would have been then but about Nine and twenty years old; and who can imagine that any man ſhould

have been employed or mentioned in ſo great a Concern, whoſe Mother was then no more than Nine and twenty years of age.

Tenthly, If we look in that Treatiſe which is called *Geſta Stephani Regis, pag.* 952. which Treatiſe was written by a Contemporary, though an unknown [164]Author, and is bound up with *Ordericus Vitalis* in that Edition printed at *Paris*, 1619. Although the ſaid Treatiſe be imperfect, and have two leaves wanting in that very place, yet we may there find enough to ſhew that the ſaid *Matilda* (who was the only Wife of the ſaid Earl *Randle*) muſt need be born long before the year 1135. for as appears there, a little before the beſieging of *Lincolne* Caſtle (which Siege as appears by other Authors, as alſo by Sir *Peter Leiceſter* in his *Hiſtorical Antiquities*, pag. 121 & 122. was in the year 1141.) the ſaid Earl of *Cheſter* was in *Lincolne* Caſtle with his Wife and Sons; and how could the ſaid Earl at that time have Sons, if *Matilda*, who was his only Wife was then but ſix years of age; The words of the ſaid Treatiſe are theſe: [Page 164.]

*PLurimo itaque evoluto tempore, cum nec comes ſolito devotiùs Regi pareret, cumque in Lincolnenſi *cum uxore & filiis commorans caſtello, civibus & affinibus dira injungere, cives Regi privatim & occultè nunciis deſtinatis, ut ad Comitem cum ſu-*[165]*orum ſuffragiis obſidendum quam feſtinus adeſſet, cum multa ſupplicatione ſæpiùs mandarunt. Rex autem repente & improviſè adveniens, à civibus ſuſceptus, caſtellum evacuatum penè invenit; exceptis uxore & fratre Comitis, paucìsq; eorum ſuffraganeis, quos idem Rege civitatem ſubeunte ibi relinquens, vix à caſtello ſolus effugit. Rege itaq; conſtanter & animoſe caſtellum obſidente, quique includebantur baliſtis, & aliis diverſi ſtudii machinis graviſſimè infeſtante, Comes Ceſtriæ, mandatis Roberto Comite Glaorniæ, ſed & Milone, & omnibus, qui ſe in Regem armarant; ſed & Walenſium gravi ſecum & intolerabili conducta multitudine, unà omnes conſpiratione, imò & concordi*

* Note. [Page 165.]

animo ad Regem expugnandum pariter convenerunt. Erat autem feſtivus Purificationis dies, &.

So that you here ſee that the ſame *Comes* or Earl, who is ſaid to be then in *Lincoln* Caſtle, *cum uxore & filiis*, is the ſame Earl, that fled out of the Caſtle, and left there his Wife and Brother, and came again with ſeveral men out of *Cheſhire* and *Wales*, and that the ſaid Earl who did ſo was the Earl of *Cheſter*, we may
[Page 166.] [166]find in moſt Hiſtorians, and alſo in Sir *Peter Leiceſter*'s *Hiſtorical Antiquities*, pag. 122. ſo that hence alſo it is very clear that *Matilda* was not born in the year 1135. for ſhe could not be Mother of ſeveral Children when ſhe was but about ſix years of age.

Eleventhly, *William Malmesbury* in that Edition printed at *Frankfurt*, 1601. in the ſecond Book of that which he calls his *Hiſtoria Novella*, pag. 186. in the year, 1142. thus writes, *Rex Stephanus ante Natale à Lindocolina provincia pacifice abceſſerat, Comitemq; Ceſtrenſem, & ejus fratrem honoribus auxe-*
* Note. *rat. Is Comes filiam Comitis Gloceſtrenſis *jamdudum a tempore Regis Henrici duxerat.* Now this Author as to his Teſtimony is beyond all exception, for he lived in the time of the ſaid Earl of *Cheſter* and *Maude*, and cannot be ſuppoſed to be ignorant when their Marriage was; for he was well known to *Robert* Earl of *Gloceſter*, Father of the ſaid *Maud*, and dedicated his ſaid Book called *Hiſtoria Novella*, as alſo his Book *de Geſtis Regum Anglorum*, to the ſaid Earl; and as his words
[Page 167.] cannot poſſibly be otherwiſe conſtrued than [167]ſo, as to make the ſaid Marriage to be at the leaſt in the year, 1135. (King *Henry the Firſt* dying the ſecond of *December* in that year) ſo no one can imagine but that the ſaid *Maud* was born long before that year, there being no probability that *Randle* Earl of *Cheſter*, who was ſo brave a Man, ſhould marry a new born Child; but there is no doubt but that the meaning of thoſe words are, that

the ſaid *Randle* married the ſaid *Maude* ſome years before the death of King *Henry the Firſt*, and conſequently before the time that Sir *Peter* doth ſuppoſe the ſaid *Maude* to be born; for as Mr. *Gouldman* tells us in his Dictionary, the Letter *A*, *prima ſignificatione connotat terminum loci unde aliquid movetur, ut redeo a villa, &c. hinc ad alia transfertur, ut notet cauſam agentem, unde ſit motus, & tempus, unde proceditur, & declaratur per cùm; ut, a parvo te novi, h. e. cum parvus eſſes.* And accordingly we ſay in the *Engliſh* Tongue, *I knew ſuch a one from a Child*, (that is) *I knew him when he was a Child*, ſo that the aforeſaid expreſſion of *William* of *Malmesbury*, doth not exclude, but include ſome of the time of King *Henry* the I.

[168]Twelfthly, *Gulielmus Gemiticenſis*, who lived in the times of *William* the Conqueror, *William Rufus*, King *Henry* the I. and ſome part of King *Steven*, and conſequently was living when the ſaid *Matilda* was married, will give us very good ſatisfaction in the point in hand; this *Willielmus Gemiticenſis*, as you may ſee in *Voſſius*'s Book, *de Hiſtoricis Latinis*, and in *Willielmus Gemiticenſis*'s own Books, did write ſix Books *de Geſtis Normannorum*, and dedicate them to *William* the Conqueror, and did afterwards add a 7th Book, in which he did write ſome little of *William Rufus*, but more largely of King *Henry* the I. whoſe death (which hapned *Decemb.* 2. 1135.) he declares, but writes of nothing later than the year 1137. and in that year he only ſpeaks of the death of ſome great perſons, and ſome few inconſiderable things. Now it cannot (as I think) be probably ſuppoſed, that this *Gulielmus Gemiticenſis* could be leſs than 30 years of age, when he had finiſhed his firſt ſix Books *de geſtis Normannorum*, and dedicated them to *William* the Conqueror: And if that hapned in the laſt year of the ſaid King *Wil-*[169]*liam*, the ſaid *Wilhelmus Gemiticenſis* would be 30 years of age in the year 1087. (for in that year *William* the Conqueror dyed) and by this computation the ſaid *Gulielm. Gemit.* would be 80 years of age, when

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he finiſhed his laſt Book in the year 1137. which is the utmoſt time that we find him to write. Now the ſaid *Wilhelmus Gemiticenſis*, in that Edition put out by M^r. *Cambden*, and printed at *Frankfurt*, 1603. in his laſt Book, and 38 *Chapter*, in that very *Chapter* where he tells us of the death of King *Henry* the I. and how King *Stephen* ſucceeded him, (which things hapned in the year 1135.) doth thus write:

Mortuo autem Ranulpho (this was the firſt Earl *Randle* of *Cheſter*) *ſucceſſit ei item Ranulphus filius ejus, vir in rebus bellicis ſtrenuus. Hujus autem Ranulphi ſororem duxit Richardus filius Giſleberti, ex qua ſuſcepit tres filios, Ipſe denique Richardus peremptus eſt à Walenſibus ut præfixum eſt, Prædictus autem Ranulphus Comes accepit uxorem Mathildem filiam Roberti Comitis*
* Note. *Gloceſtriæ, ex qua genuit duos filios *Hugonem & Richardum.*

[Page 170.] [170]Now how can it be imagined, that this old *Wilhelmus Gemiticenſis*, who did write but to 1137, ſhould in the ſame *Chapter* that he tells us of the death of King *Henry* the I. (which hapned in the year 1135.) tell us of *Hugh* and *Richard*, the two Sons of the ſaid *Matilda*, if the ſaid *Matilda* was not born till the year 1135.

And theſe words of *Wilhelmus Gemiticenſis*, beſides what they prove themſelves, do alſo ſtrongly confirm what *Caradocus Lancaruenſis* (the before mentioned contemporary Author) had formerly ſaid; For if the ſaid *Hugh*, the elder of thoſe Sons, was five years old in that year, that the ſaid *Gulielmus Gemiticenſis* doth mention the ſaid *Hugh* and his younger Brother *Richard*, the ſaid *Hugh* would then be as old as I ſuppoſe him to be, in that year in which the ſaid *Caradocus* ſays that the ſaid *Hugh* fortified his Caſtle of *Cymaron*, and wan *Melyenith* to himſelf.

So that there is no doubt at all, but that *Hugh Cyvelioc* himſelf was ſeveral [171]years older, than Sir *Peter Leiceſter* doth ſuppoſe [Page 171.] *Matilda* the Mother of the ſaid *Hugh Cyvelioc* to be, and by conſequence there muſt be a vaſt difference betwixt the age of the ſaid *Hugh*, and the ſaid *Bertred*, who was ſecond Wife to the ſaid *Hugh*.

Baddeley,
May 22.
1677.

FINIS.

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